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## PRACTICAL ASPECTS OF THE LAW REGARDING POVERTY *

### I. INTRODUCTION

#### 1. SCOPE OF PAPER

THE purpose of this paper is not to present the results of any scientific research on the subject of religious poverty but rather to submit a brief outline of the legal obligations resulting from the religious vow of poverty. The primary objective, therefore, will be to attempt to explain the principles of law which will enable one to answer questions frequently presented by religious regarding the obligations of the vow of poverty. Within the time allotted for this paper it would be impossible to give a complete discussion of the principles of Canon Law regarding poverty. In the choice of materials for this discussion the author has been guided by the experience gained through attempting to answer questions most frequently asked him by religious.

#### 2. DEFINITION OF POVERTY

The vow of poverty is one of the essential obligations undertaken by every religious either implicitly or explicitly in virtue of his profession.[1] It may be defined thus: a promise made to God in a religious institute by which the one

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[1] Canon 487.

making profession divests himself of the right to use any material things having a money value independently of his competent superior.[2]

The object of the vow of poverty are all material things which have a monetary value. Hence, those things which have a spiritual character are not included, as for example, honor, knowledge, liberty, conscience, health. Relics do not pertain to the matter of the vow of poverty because they cannot be evaluated with a temporal price. The contrary is true of the reliquary or the container in which the relic is preserved. Manuscripts which have no particular monetary value also do not fall under the vow of poverty. A manuscript, however, which would have special value could fall under the vow of poverty with the result that a religious could not freely dispose of it.[3]

Immediately a distinction between the simple and the solemn vow of poverty should be made. By the solemn vow of poverty the religious renounces all ownership, including the right to acquire property, and the right to use material things without the permission of his superior. By the simple vow of poverty a religious does not divest himself of the ownership of material things, but in the use of these things makes himself dependent upon a superior.[4] An act of proprietorship on the part of the religious of solemn vows would be invalid, while an act of proprietorship for the religious of simple vows without proper permission would be illicit but valid. Results of this distinction of simple and solemn vows will be discussed in this paper and the principles of law governing both will be briefly analyzed.

[2] Ellis, *A Review for Religious*, I (1942), p. 16. Goyeneche, *Iuris Canonici Summa Principia*, Pars II, *De Religiosis* (Romae: Tip. Cuore di Maria, 1938), p. 107; *Normae* of 1901, art. 113, *op. cit.*, p. 142. Papi, *Religious in Church Law* (New York: Kenedy, 1924), p. 236. Schaefer, *De Religiosis* (2. ed., Muenster: Aschendorff, 1931), n. 326.

[3] Schaefer, *De Religiosis*, nn. 327-328.

[4] Note "*Quam maxima*", November 13, 1847; *Normae* of 1901, art. 113; cf. Ellis, "Distinction between the Simple and the Solemn Vow of Poverty", *Review for Religious*, p. 66.

### 3. HISTORICAL OUTLINE

At this point we should make at least brief reference to the historical development of the vow of poverty.[5] Until the eighteenth century the Church officially recognized only one kind of vow of poverty, namely, the solemn vow of poverty. It was essential, therefore, to the concept of poverty until this time that the religious renounce the ownership of all property. The jurisprudence of the simple vow of poverty evolved in course of time and not without difficulties and problems which were gradually clarified. Several important documents should be studied in order to understand the historical development of the law governing the simple vow of poverty. Until the nineteenth century it can be said that there was no general legislation for the simple vow of poverty. The only legislation of a papal character would be occasional rescripts granted to special religious institutes. The Sacred Congregation of Bishops and Regulars in approving congregations of both men and women with simple vows only was guided by the formula which came to be known as the "formula Bizzarriana", so called from Cardinal Bizzarri.[6] Bizzarri's formulary continued to be used for individual congregations approved from 1860 onwards. It was as late as December 8, 1900, by his constitution "*Conditae a Christo*" that Pope Leo XIII publicly acknowledged that members of a congregation of simple vows were religious in the true sense of the word. Shortly thereafter the Sacred Congregation of Bishops and Regulars drew up a new set of rules to be followed in approving institutions of simple vows. These *Normae* were published on June 28, 1901, which with some modifications became the general law of the Church as found in *The Code of Canon Law.*

[5] For an interesting study of the development of the jurisprudence of the simple vow see the article, cf. Ellis, "The Simple Vow of Poverty", *Review for Religious*, VI (1947), 67 ff.

[6] Msgr. Andrew Bizzarri (later Cardinal) was Secretary of the Sacred Congregation at the time.

### 4. PLAN AND DEFINITIONS

An attempt will be made to explain the obligations of the vow of poverty by a commentary on the pertinent Canons of the Code with reference to the official acts which a candidate for the religious state must make from the entrance into the novitiate until final profession whether simple or solemn. These official acts will be described and the obligations resulting therefrom analyzed.

Before proceeding it may be in order to define certain terms which will occur frequently during the course of this paper, namely, radical ownership, use, usufruct and administration. A distinction must be made between perfect ownership (*dominium perfectum*) and imperfect ownership. Perfect ownership means the right not only to own the object but also to use it, to profit by the fruits therefrom and to dispose of it. Imperfect ownership implies that this right has in some way been limited. Radical ownership means that the individual has the right to the substance of the thing but he does not have the right to use it, to derive profit therefrom nor, finally, to dispose of it.

Use is the simple enjoyment of a material thing. Usufruct, in as far as it differs from simple use, is the right to the fruits or income from property with the obligation, however, of preserving the substance of the thing intact. Administration comprises all those acts which are required for the conservation and proper improvement of temporal possessions as well as the collection and application of the fruits or revenues derived therefrom, together with the right to place all necessary actions according to law to achieve this end.[7]

## II. The Obligations of a Novice to Retain Property

As is evident, a novice does not have any of the obligations of the vow of poverty. However, Canon Law does have a strict provision regarding the temporal possessions of a novice. Canon 568 provides as follows: " If, during the novitiate, the

[7] Schaefer, *De Religiosis*, n. 327.

novice in any way whatever renounces his benefices or his property or encumbers them, such a renunciation or encumbrance is not only illicit but also null and void". A novice, therefore, is forbidden to give away or to encumber in any way his property during the time of the novitiate and that under pain of nullity. Small donations by a novice would not appear to be forbidden provided they would not amount to a notable part of the novice's possessions.[8]

The law does not expressly forbid the alienation of temporal goods during the time of the postulancy. However, it would appear to be contrary to the spirit of the law to do so. Yet, it cannot be said that a donation or any other encumbrance of property by a postulant would be directly contrary to the law, since no law exists. Such donations would be valid. At most they could be considered rescissible.[9] The reasons for forbidding the renunciation of temporal goods during the postulancy are the same as those obtaining for the period of the novitiate, namely, freedom on the part of the candidate to remain in religion or return to the world and security in the event of return to the world. These principles should guide the priest in advising prospective candidates for the religious state. Candidates should not be advised to give away their temporal goods when leaving for the convent. Should a candidate do so, he would act unwisely and imprudently, but it cannot be said that a positive law of the church would be violated.[10]

## III. Obligations of the Simply Professed Religious

### 1. The cession of administration and disposition of use and usufruct

Canon 569, § 1, provides that before simple profession of vows whether temporary or perpetual, the novice must for the

8 Schaefer, *De Religiosis*, n. 251.

9 Larraona, "Consultationes", *Commentarium pro Religiosis*, V (1924), 223; Ellis, *Review for Religious*, I (1942), 19; Schaefer, *op. cit.*, n. 251.

10 Ellis, *l. c.*; Schaefer, *l. c.*

entire time that he will be bound by simple vows appoint an administrator of his own choice to take care of his temporal goods and also, unless the constitutions of his own institute provide otherwise, he must dispose freely of the use and income of all his property. The cession and disposition should be made during the final weeks of the novitiate when it is certain that the novice will be admitted to profession.[11]

The actual text of the Code presents some difficulties. Canon 569 § 1, reads " ante professionem votorum simplicium sive temporariorum sive perpetuorum novitius debet . . . . " In the first instance the obligation is imposed upon novices and not upon those who already have taken vows. In view of the prescription of Canon 574 that temporary profession must precede perpetual profession whether simple or solemn, it is difficult to understand how the obligation can be imposed upon a *novice* to make the cession or disposition immediately prior to the profession of perpetual vows. Larraona[12] is of the opinion that the Canon refers to religious institutes which by Apostolic privilege make profession of perpetual vows immediately after the novitiate. Pruemmer[13] offers the suggestion that reference is made to religious transferring from another institute and therefore making perpetual profession immediately after the novitiate. This explanation, as Larraona[14] points out goes counter to Canon 580, § 3, which requires that the cession and disposition may not be changed after profession except under certain conditions. Blat[15] holds that the cession and disposition must be made before each profession with the result that the religious could either change or confirm those made at a previous temporary profession. Two factors militate against this interpretation,

[11] Schaefer, *De Religiosis*, n. 255.

[12] " De Paupertate Simplici ", *Commentarium Pro Religiosis*, I (1920), 335.

[13] *Manuale Iuris Ecclesiastici.*

[14] *L. c.*

[15] *Commentarium Textus Codicis Iuris Canonici*, Liber II, *De Personis* (2. ed., Romae: Ferrari, 1921), p. 625.

namely, the fact that the Canon states definitely that the novice must do these things, "novitius debet". Secondly it is stated that these acts are to be placed before profession. Hence, the conclusion seems certain that this cession and disposition in regard to temporal goods must be made once and that before the first profession.[16]

The novice is obliged to dispose of the use and any fruits or benefits derived from his material possessions for the duration of his simple profession. The law does not expressly forbid a religious to dispose of usufruct in his own favor.[17] Of course, if he does so, it must be added to his patrimony. Some constitutions approved before the Code limit or even take away the right of a religious to dispose of the use and the usufruct of his property. These provisions remain in force as was decided by the Commission for the Interpretation of the Code.[18]

The appointment of an administrator and disposition of use and usufruct is to be made after simple profession, if it was omitted because the individual had no temporal possessions or because the temporal goods were acquired subsequently by any means whatsoever after simple profession.[19] The cession of administration and disposition of use cannot be altered by the religious himself, unless the constitutions permit this. They may be changed, however, with the permission of the superior general of the institute on condition that the change is not made in favor of the religious institute, at least if a notable part of the patrimony of the religious is involved.[20] A notable part is considered relative to the entire

16 Goyneche, *De Religiosis*, p. 107.

17 The word "disponere" would indicate a giving over to someone else. See, however, Turner, *The Vow of Poverty*, n. 54, The Catholic University of America Canon Law Studies (Washington, D. C.: The Catholic University of America, 1929), pp. 127-128.

18 *AAS*, XI (1919), 478; Schaefer, *De Religiosis*, n. 254; Larraona, "De Paupertate Simplici", *Commentarium Pro Religiosis*, I (1920), 338-339.

19 Canon 569, § 2.

20 Canon 580, § 3.

amount and generally Canonists agree that one-third or one-fourth would constitute a notable part.[21]

### 2. OBLIGATION TO RETAIN OWNERSHIP OF PROPERTY

All simply professed religious must retain the ownership of their temporal goods and hence also they retain the legal capacity to acquire other goods subsequent to profession.[22] This principle holds for all religious in simple vows unless their own particular constitutions determine otherwise. There are a few congregations approved before the Code which do not permit the individual religious to retain ownership of their temporal goods. These are exceptional cases. It may be stated as a general rule that all religious in simple vows retain radical ownership to their property and the ability or legal capacity to acquire temporal goods.

Religious with simple vows in congregations are not permitted to abdicate gratuitously the dominion over their property by a voluntary deed or conveyance.[23] A donation, as prohibited by Canon 583, is a free gift of something not due to the receiver. A donation made out of gratitude or in recompense for a service is not a donation in the proper sense. Furthermore, a bilateral contract, as for example, a loan, sale, mortgage, is not a donation. Ownership of the property of the religious is thus not lost but changed. Small donations do not seem to be prohibited by Canon 583 which makes reference to an " abdicatio bonorum suorum ", or a giving away of one's patrimony.[24]

It should be noted that religious with simple vows in religious orders are prohibited under pain of nullity by Canon 581, § 1, to abdicate the ownership of their property for the duration of their simple profession.

[21] Schaefer, *De Religiosis*, n. 270. It should be noted that Nuns are obliged to obtain the permission of their Local Ordinary and, if the monastery is subject to Regulars, also of the Regular Superior—Canon 580, § 3.

[22] Canon 580, § 1; see also Canon 583, 1°.

[23] Canon 583, 1°.

[24] Schaefer, *De Religiosis*, n. 271; Cappello, *Summa Iuris Canonici* (4. ed., Romae: Universitas Gregoriana, 1945), II, 66.

### 3. OBLIGATION TO MAKE A LAST WILL AND TESTAMENT

Canon 569, § 3, provides that a novice in a religious congregation must make a last will and testament. This will must be made prior to the profession of temporary vows and must provide for the disposition after death of all the property which the novice has at the time or perhaps will acquire at a later date.

It should be noted that only novices in religious congregations are obliged to make a will. Members of religious orders are not obliged by law to make a will, though it is both permissible and perhaps advisable for them to do so. A will thus made would remain in effect only for the duration of the temporary profession and of necessity would cease to have any legal force after solemn profession.

All authors agree that if at all possible a civilly valid testament should be drawn up. There is considerable dispute among authors regarding the existence of an obligation to make a will if the novice is not able in civil law to make a will, for example, because he is a minor. It would seem to be the better opinion that the novice would nevertheless be obliged to make a canonically valid testament and that any defect in civil law should be corrected subsequently as soon as this is possible.[25]

Canon 583, 2°, provides that a religious may not change the will made prior to temporary profession without the permission of the Holy See. In urgent cases when time does not allow recourse to the Holy See, the will may be changed with the permission of the major superior, or, if even the latter cannot be contacted, with the permission of the local superior.

## IV. Solemn Profession and Renunciation of Ownership

Within sixty days prior to solemn profession a religious must renounce the ownership of all his temporal possessions. A renunciation of property made prior to that time would be

25 For a thorough discussion of this subject, see Turner, *The Vow of Poverty*, pp. 166-173.

invalid. It is to be made conditionally, namely, upon the solemn profession which is to follow.[26]

Canon 581, § 1, provides that this renunciation is to be made of all goods which the religious actually has, or, to employ the exact words of the Code, "omnia bona quae actu habet". This includes all those goods which the individual actually owns at the time and those to which he has a certain right but not those which he merely hopes to acquire.[27] Thus, the legitimate share in parental inheritance would be something to which one would have a certain right. The assurance of a gift at some future date or a bequest in the will of a living person would confer not a certain right but only a hope. This interpretation of the canon is based upon practice existing prior to the Code and is adopted by constitutions of religious orders approved after the Code.[28]

As soon as possible after solemn profession the provisions of the above mentioned renunciation are to be put into effect also in as far as civil law is concerned.[29] As a result of solemn profession the religious loses his ability to acquire temporal goods. Accordingly, Canon 582 provides that all things received by one in solemn vows accrue to the order, province or house in accord with the constitutions. In religious orders which are incapable of owning temporal goods, such things become the property of the Holy See. These principles obtain unless special Apostolic Indults have been obtained by a particular religious order. The ancient monastic rule, "quid monachus acquirit monasterio acquirit" is given full force in orders with solemn vows. Anything which a religious in solemn vows receives, even by way of inheritance in the event that the renunciation did not include this particular item,

[26] Canon 581, § 1.

[27] Schaefer, *De Religiosis*, n. 274; Larraona, "Consultationes", *Commentarium pro Religiosis*, I (1920), 79-80; Cappello, *Summa Iuris Canonici*, II, 66.

[28] Thus, the Constitutions of the Order of Friars Minor (1922) provide that the renunciation include "quae habet et per haereditatem post professionem habiturus est".—n. 89.

[29] Canon 581, § 2.

would belong to his order. Hence, a gift to a religious in solemn vows always becomes the property of the order and is subject to the administration of the proper religious superior.[30]

## V. The Common Life, Peculium and Gifts Received by Religious

Canon Law strictly enjoins that the common life be accurately observed in every religious institute. The common life implies two things: First, that the religious in the use of temporal goods is dependent upon his superiors and, secondly, that all goods received by a religious (except those received by a religious in simple vows for himself) become the common property of the religious institute to be employed for the common needs of all.[31] Hence, those temporal goods received by individual religious, even superiors, for the religious institute must be added to the goods of the house, province or religious institute itself.[32]

In congregations with simple vows those things which a religious acquires by his own industry or which are acquired in view of the religious institute become the property of the institute.[33] In religious orders with solemn vows anything received by a religious in any manner whatsoever becomes the property of the order.[34] It is, therefore, a violation of the obligation of poverty to accept gifts independently of superiors or to retain them in one's possession without permission. A gift which a superior permits a subject to employ for his personal use becomes the property of the institute which the individual concerned now uses with proper permission.

Canon Law most seriously insists upon the observance of the common life. Thus, Canon 587, § 2, forbids the promotion of

30 Schaefer, *De Religiosis*, n. 274.

31 Canon 594, §§ 1 & 2; Ellis, "Common Life and the Spirit of Poverty", *Review for Religious*, II (1943), 4 ff.

32 Canon 594.

33 Canon 580, § 2.

34 Canon 582.

students to orders if the common life is not observed in houses of study. Canon 2389 imposes severe penalties upon violators of the common life, including privation of active and passive voice and deposition.

Probably the greatest single threat to the perfect observance of the common life and also the source of most serious discontent within a religious community is the improper handling of gifts received by a religious. Carelessness in this matter tends to incline an individual religious to seek gifts for his own use and thus make himself independent of his superior in the use of temporal goods. In this connection it should be noted that religious in simple vows may acquire temporal goods. However, they may not dispose of the ownership of these goods nor may they retain them for their own use. A religious in simple vows, as explained above, must cede the use and usufruct either prior to profession or if subsequently received at the time they are obtained.

Another danger to the perfect observance of the common life is the so-called peculium. A peculium is a sum of money or its equivalent, generally small in amount, which is distinct from the common fund of the community and which is given to an individual religious to keep for his personal use over and above what is necessary for his immediate needs. Perfect or independent peculium is money acquired by a religious for his use independently of his superior, that is, without supervision of any kind and without action on the part of the superior. Imperfect or dependent peculium is that which is employed by a religious with the consent of his superior who has the right to revoke or curtail it at his own pleasure.[35]

Perfect peculium is directly contrary to the vow of poverty and the common life. It may not be justified for any reason whatsoever. Imperfect peculium in itself is not contrary to the vow of poverty but it is considered by many authors as against the common life.[36] Some authors justify a mitigated

[35] Turner, *The Vow of Poverty*, p. 202; Schaefer, *De Religiosis*, n. 338.

[36] Schaefer, *l. c.*

form of the peculium, employed with due dependence upon superiors, as necessitated by the modern circumstances of life.[37] The danger of abuse in this matter, if proper care is not exercised by superiors, is recognized by all. It is not necessary to note that the practice of having a peculium sometimes exists in religious communities although it is not called by that name.

## VI. Gravity of Sins Against Poverty

A violation of the vow of poverty is sometimes a violation both of the virtue of justice and the virtue of religion. It is not always the case that both obligations are violated at the same time. Thus, the use of a donation given specifically to a religious by a benefactor without proper permission is a violation of the vow of poverty but no injustice is committed. A sin of injustice without a sin against religion would be committed by a religious who would inflict some damage without any benefit to himself.[38]

Authors generally give the rule that a violation of the vow of poverty is a mortal sin if the thing unduly used or taken would be sufficient in amount to constitute a grievous sin against justice.[39] Since the religious institute is a moral person the absolutely grave amount would be required when things are taken from the community. In terms of today's values this would be probably at least $100.00. Some feel that this amount can be doubled and consider the amount necessary for a serious violation of poverty $200.00.[40]

This writer feels that the application of the norms of justice to determine the seriousness of a violation of poverty is unfortunate. The only similarity of the two obligations is the

[37] Turner, *op. cit.*, p. 205; Goyeneche, *De Religiosis*, p. 147.

[38] Schaefer, *De Religiosis*, n. 333.

[39] Van Acken, *A Handbook for Sisters* (St. Louis-London: Herder, 1937), n. 302; Papi, *Religious in Church Law*, p. 244; Schaefer, *l. c.*

[40] Donovan, "Questions on Religious Poverty", *The Homiletic and Pastoral Review*, XLVII (1947), 742.

circumstance that both are concerned with temporal goods. Many factors must be considered to determine the gravity of a violation of poverty. Thus, the degree of poverty professed by the particular religious institute must be considered. The financial condition of the community should not be overlooked. The degree of unwillingness of the superior concerned also enters into the picture.

A norm which takes the above factors into consideration is the following. The gravity of a violation of poverty should be determined in accord with the regulations of each religious institute with reference to the administration of temporalities. Thus, there would be a serious violation of poverty if the amount would exceed that which a local superior could expend or donate without the consent of his council or of his higher superior. It would seem to be a clear indication in the constitutions of the institute itself that this amount is considered serious by the mere fact that such solemnity or formality of procedure is required. Hence, to discover what amount is considered serious in case of a violation of poverty, one would have to inquire in each religious institute regarding the amount which a local superior can expend or donate upon his own authority. Anything in excess of that amount should be considered serious.

# LAY COOPERATION IN THE ADMINISTRATION OF CHURCH PROPERTY

THE Regimen, or ruling power of the Church, as part of the basic ecclesiastical power of jurisdiction, comprises further the legislative, judicial and executive powers. Part of the function of the executive power centers around the administration of temporalities, or of "church property".[1] The Church asserts its native right to acquire, hold and administer temporal things for the attainment of the purposes for which it was founded, and this right it possesses freely and independently of the civil authority. This same right to acquire, hold and administer property is extended by the law of the Church to individual churches and other moral persons which have been duly established by church authority as juridical persons.[2]

[1] Administration here connotes a restricted sense, referring exclusively to the management of temporal goods; as part of the executive power, it is distinguished again from the coactive and governing power of the Church. Cf. Ottaviani, *Institutiones Iuris Publici Ecclesiastici*, 3. ed., 2 vols., (Romae: Typis Polyglottis Vaticanis, 1947), I, nn. 197, 122, 40. Wernz-Vidal include this faculty under the *gubernium—Ius Canonicum*, 3. ed., 8 vols., (Romae: Apud Aedes Universitatis Gregorianae, 1933-48), IV, n. 736. Cf. Tirado, *De Iurisdictionis Acceptione in Iure Ecclesiae*, (Romae ["apud Angelicum"]: Manuzio, 1940), p. 227.

The executive power includes generally what are known as "administrative functions". Caron purports to show with the help of numerous sources that the laity in the early Church had an important part in the following acts of the governing power in general: 1) cooperation in the functioning of the various ecclesiastical offices; 2) provision of offices; 3) acceptance of the renunciation of the office by ecclesiastical officials; 4) administration of ecclesiastical funds; 5) consultive functions in regard to the bishop. Though the sources cited are incomplete and not convincing (for the broad thesis envisioned), they provide a helpful background for a study of the question—*I Poteri Giuridici del Laicato nella Chiesa Primitiva*, (Milano: Giuffre, 1948), p. 185.

[2] Cf. canons 100, § 1; 1495, §§ 1, 2; 531; 676.

The term "church property" or ecclesiastical goods includes all temporal goods (whether corporeal or incorporeal, movable or immovable) which belong either to the Church Universal and the Apostolic See, or to some other moral person in the Church.[3] The term "church", then, in connection with the word "property", includes not only the Church Universal and the Apostolic See, but also all moral persons in the Church unless the contrary is evident from the context or from the nature of the matter at hand.[4] Hence the term "church" is taken in a broad sense to mean not only a place in which divine worship is held, but also every ecclesiastical moral person constituted as such by church authority for the purpose of religious or charitable activity, e.g., hospitals, schools, religious houses and institutes, as well as chapters of persons. It does not include any ecclesiastical associations which are merely approved by the Church, nor does it include pious and social works (established by private persons) which do not require ecclesiastical approval and are not subject to the ordinaries.[5]

The purpose of this article is to ascertain the nature of ecclesiastical property administration and of lay cooperation with it, as well as to determine the modes which such cooperation assumes under existing law. This theoretical and practical discussion will be preceded by a short summary of the varied history of lay cooperation with the administration of ecclesiastical temporalities.

## Section I. Historical Synopsis

### *1. Prior to the Council of Trent*

From scriptural times, and in the very foundation of the Church, Christ seemed to imply generous lay cooperation in the matter of temporalities, when He told the Apostles to leave

[3] Canon 1497, § 1.

[4] Canon 1498.

[5] Bouscaren-Ellis, *Canon Law, A Text and Commentary* (Milwaukee: Bruce, 1946), p. 735.

their support and the handling of temporal goods to the good will of the people, thus freeing themselves from the incumbrances of administration, which were left largely to lay followers.[6] In the early days of the Church, all goods were held in common and distributed according to need, but the growing demand for special managers was filled by the appointment of the seven deacons.[7] Lay encroachment on clerical administration soon came to be recognized as an abuse, and all control resided henceforth with the bishop or his appointees,[8] who were usually either priests or deacons,[9] although St. Cyprian still acknowledged a consultive role on the part of the people.[10] The *Constitutiones Apostolorum* (c. 400) forbade all lay interference, even to serious criticism of episcopal policies or management.[11]

St. Ambrose used the services of his brother as administrator,[12] while St. Augustine,[13] St. John Chrysostom (407)[14]

[6] Matt., X: 9-10; Luke, X: 4-7, VIII: 2-3.

[7] *Acts*, II: 45; IV: 32-37; VI: 1-6.

[8] For a thorough treatment of this early period, cf. Thomassinus, *Vetus et Nova Ecclesiae Disciplina circa Beneficia et Beneficiarios*, 10 vols., (Moguntiae, 1787), pars III, liber 1. He maintained the deacons were chosen to supplant unsatisfactory lay helpers—*ividem*, c. 1.

[9] Cf. *Canones Apostolorum*, cann. 38, 40—Turner, *Ecclesiae occidentalis monumenta iuris antiquissima. Canonum et conciliorum interpretationes latinae* (Oxonii, 1899-1930); S. Gregorii Turonensis, *Vitae Patrum*, c. IV, n. 1—Migne, *Patrologiae Cursus Completus, Series Latina*, 221 vols., (Parisiis, 1844-1864), (cited *PL*), LXXI, 1023; Concilii Antiocheni Canones, c. 24—Labbé-Cossart, *Sacrosancta Concilia ad regiam editionem exacta* (Venetiis, 1728-1733), (cited *Concilia*), t. II, 595.

[10] *Epistola V, ad presbyteros et diaconos*, c. 1—*PL*, IV, 237; *Ep. XXVIII, id. tit.*, c. 3—*ibid.*, 309.

[11] "Tibi, laice, convenit, ut largiaris, episcopo vero tamquam oeconomo et administratori rerum ecclesiasticarum, ut dispenset. Cave tamen, ne episcopum ad rationes voces, neque dispensationem illius observes, quomodo eam gerat, aut quando, aut quibus, aut ubi, utrum bene, an secus"—*Const. Apost.*, L. II, c. XXV—Migne, *Patrologiae Cursus Completus Series Graeca*, 162 vols., (Parisiis, 1857-66), (cited *PG*), I, 659-683. Thomassinus, *ibidem*, c. 2. Cf. Funk, *Didascalia et Constitutiones apostolorum* (Versio Latina, Paderbornae, 1905), lib. 2, c. 25, for a variant reading.

[12] *De Excessu Fratris Sui Satyri*, lib. I, 20—*PL*, XVI, 1297.

[13] *In Evangelium Joannis*, Tract. 62—*PL*, XXXV, 1803.

[14] *Homilia IV in Acta*—*PG*, IX, 42;

St. Basil (379)[15], Cassianus (430-435)[16] and St. Jerome (420)[17] all insisted on clerical economes for handling Church funds, although St. Augustine and St. John Chrysostom both asked for some lay help to relieve their fatigue caused by temporal cares.[18]

Despite the early insistence of Urban I (c. 222-30)[19] and the Council of Antioch (341)[20] on the bishop's rights as administrator, laymen were still admitted as economes, so that the Councils of Ephesus (431)[21], Chalcedon (451)[22], Seville (619),[23] and Toledo[24] were obliged to insist on the use of clerics for the position, however, the XI Council of Carthage (407) had explicitly requested a form of *nudum ministerium* by way of lay administration or consultation.[25] Letters of

[15] *Epist. 412—PG*, XXXII, 642.

[16] *Collatio XXI*, cap. 1—*PL*, XLIX, 1170-1171.

[17] *Epist. 52 ad Nepotianum—PL*, XXII, 535.

[18] Possidius, *Vita Augustini*, cap. 23—*PL*, XXXII, 52.

[19] In a papal letter—c. 16, C. XII, q. 1—Mansi, *Sacrorum Conciliorum Nova et Amplissima Collectio*, 53 vols. in 60 (Parisiis, Arnhem, Lipsiae, 1901-27), (cited Mansi), I, 748.

[20] Can. 25—c. 23, C. XII, q. 1; Bruns, *Canones Apostolorum et Conciliorum Saeculorum IV-VII*, 2 vols. (Berolini, 1839), (cited Bruns), I, 87; Mansi, II, 1319.

[21] Bruns, I, 25; Mansi, IV, 1123. The importance of these early councils increases with the fact that they drew their canons largely from several previous councils, e.g., Antioch, Gangra and Laodicea, and influenced strongly the later councils. Cf. Van Hove, *Commentarium Lovaniense in Codicem Iuris Canonici*, vol. I, *Prologomena* (2. ed. Mechliniae-Romae: H. Dessain, 1945), pp. 130-131.

[22] Can. 25—c. 4, D. LXXXIX—Mansi, VI, 563.

[23] Concilium Hispalense II, c. 9—Labbé-Cossart, *Concilia*, t. VI, 1406: ". . . contra mores ecclesiasticos, laicos habere in rebus divinis constitutos oeconomos . . . ex proprio clero oeconomum sibi constituant."

[24] Concilium Toletanum IV, c. 48—Labbé-Cossart, *Concilia*, t. VI, 1463: ". . . oeconomos . . . de proprio clero habere oportet."

[25] " Placuit praeterea ut executores in omnibus desideriis quae habet ecclesia quinque postulentur, qui in diversis provinciis impertiantur."—Mansi III, 1163.

Innocent I (401-417)[26] and Gregory (590-604)[27] strove to lessen the danger of lay abuse and return administration to clerics. The VII General Council of Nice (787) witnessed the revival of the ancient practice,[28] but it was still necessary for Popes St. Nicholas (858-867)[29] and Victor II[30] to warn emperors and nobles against lay intrusion; the I Council of the Lateran (1123) finally made all disposition of ecclesiastical property by laymen entirely unlawful.[31]

Gradually, however, there came in the early middle ages the invasion of ecclesiastical administration by laymen of princely and even of common status, until the flagrant abuses of commendatory abbeys, proprietary churches, feudal tithes and lands, lay investiture and the lesser corruptions of patronage became the tenor of ecclesiastical practice in matters of church property.[32] Already in 495 Pope Gelasius I had denied founders and builders any rights over a church,[33] and the

[26] C. 2, D. LI—Jaffé, *Regesta Pontificum Romanorum ab Condita Ecclesia ad Annum post Christum natum MCXCVIII*, 2. ed. correcta et aucta, 2 vols. in 1, (Lipsiae, 1885-88), (cited Jaffé), n. 111.

[27] C. 5, D. CXXXIX—Jaffé, n. 1731. Cf. also Boniface V (619-625) in a similar letter, c. 22, C. XVI, q. 7—Bruns, II, 72; Mansi, X, 560.

[28] Can. 11—Mansi, XIII, 752.

[29] C. 5, D.X—Jaffé, n. 2796.

[30] Mansi, XIX, 835, 837.

[31] C. 25, C. XVI, q. 7—Jaffé, n. 7027.

[32] Gratian repeatedly remarked that no layman, even an emperor, could determine ecclesiastical matters without ecclesiastical authority; cf., *e.g.*, the preface to c. 1, D. XCVII—Jaffé, n. 353. For a thorough study of certain abuses, cf. Stutz, "The Proprietary Church as an Element of Mediaeval Germanic Ecclesiastical Law", *Studies in Mediaeval History*, vols. I-II, *Mediaeval Germany, 911-1250* (edited by Geoffrey Barraclough, Oxford, 1938), II, 35-70.

[33] C. 26, C. XVI, q. 7—Jaffé, n. 416. Cf. Jaffé, n. 417 and Mansi, VIII, 46, for other letters of the Pope.

Caron holds that lay "founders" were actually "organs of ecclesiastical administration" and "invested with the functions of creating new offices" in the Church—*op. cit.*, p. 187. Cf. Socratis, *Historia Ecclesiastica*, l. I, c. IX—*PL*, XXI, 479-480; Theodoreti Cyrensis, *Ecclesiastica Historia*, l. I, c. XXIII—*PG*, LXXXII, 971-974.

502 Synod of Rome recorded that laymen could determine nothing in the Church, "*cui subsequendi manet necessitas, non auctoritas imperandi.*" [34] Everything temporal was to remain under episcopal administration.[35] Founders and proprietors of churches assumed greater power but came under repeated attacks of popes and councils,[36] especially in regard to the *ius praesentandi*, the *ius regaliae* (title to revenues) and the *ius spolii* (a share in the cleric's fees).[37]

Pope Urban II (1088-1099) clearly declared: "*Unde interdictum est omnibus laicis ne amplius altaria vel ecclesias sibi retineat*".[38] The I General Council of the Lateran decreed that laymen had no authority to dispose of anything belonging to the Church, under threat of sacrilege.[39]

In France, however, under Clovis, Charles Martel, Pepin the Short, Charlemagne and Charles the Bald, countless churches, monasteries, ecclesiastical estates and even church

[34] C. 1, D. XCVI—Jaffé, n. 757; this expression was found frequently in later decrees; cf. c. 23, C. XVI, q. 7.

[35] For the *seniores*, who were possibly a consultative, administrative group of laymen, cf. S. Augustini, *Quaestionum in Heptateuchum Libri Septem*, l. III, c. XXV—*PL*, XXXIV, 686; S. Optati Milevitani Episcopi. *De schismate Donatistarum adversus Parmenianum*, lib. I, c. XVII—*PL*, XI, 918; *Gesta Purgationis Caeciliani et Felicis*—Labbé-Cossart, t. I, col. 1474-1486; Merici Casauboni *nota 95, in Optatum Milevitanum*—*PL*, XI, c. 18; Concilium Carthaginense IV (a. 403)—Hardouin, *Acta Conciliorum et Epistolae Decretales ac Constitutiones Summorum Pontificum*, 12 vols., (Parisiis, 1715), (cited Hardouin), I, 882 sqq.

Cf. *Dictum Gratiani* ad D. XCVI; ". . . laicus non habet potestatem suo iure constituendi aliquid de rebus ecclesiasticis."—*Gl. Ord.*, ad D. XCVI, s.v. *illud autem*. Cf. c. 10, C. VI, q. 7; Bruns, II, 164; Mansi, VIII, 354; c. 7, C. IX, q. 1; Bruns, II, 153; Mansi, VIII, 352; c. 2, C. X, q. 1; Bruns, I, 214; Mansi, V, 1013.

[36] Cf., *e.g.*, c. 34, C. XVI, q. 7; Jaffé, n. 1519; *Dictum Gratiani*, ad c. 30, C. XVI, q. 7; c. 31, C. XVI, q. 7; Bruns, I, 292.

[37] Cf. c. 33, C. XVI, q. 7—Jaffé, n. V. Cf. also canon 3 of the Council of Rheims (1049)—Mansi, XIX, 742, and canons 5, 6 of the Synod of Rome (1059)—Mansi, XIX, 909.

[38] Can. 20 of the Synod of Clermont (1095)—Mansi, XX, 818.

[39] Cann. 2, 4—Schroeder, *Disciplinary Decrees of the General Councils, Original Text with English Translation*, (St. Louis: Herder, 1937), pp. 179-180; Mansi, XXI, 281.

revenues had been made over to laymen in fief or by tithe. Early Councils at Orleans (511)[40] and Arles (813)[41] had attacked the practice; still, in 997 at the Council of St. Denis the abuse persisted, but was condemned both there and in a pseudo-Isidorian letter ascribed to St. Jerome.[42] Nicholas II (1059-1061),[43] Gregory VII,[44], Urban II (1088-1099)[45] and Pascal II (1099-1118)[46] fought against the abuses, seconded strongly and effectively by Callistus II (1119-1124), who at the I Council of the Lateran (1123) threatened anathema for all usurpers.[47] The II Council of the Lateran (1139) saw the end of most violent abuses.[48]

Commendatory abbeys and churches were vestiges of a system whereby ecclesiastical institutions were given over to noblemen for protection during wars, with the result that lay control became extremely burdensome to the Church.[49] Even some sees were given *in commendam* and their return was usually conditioned by the retention of the right of patronage.[50] Usually the laymen were bound to return some

[40] Cann. 15, 35—Bruns, II, 160 f.

[41] Can. 25—Mansi, XII, 1082.

[42] Cf. Mansi, XIX, 221; c. 60, C. XVI, q. 1 (caput incertum)—Berardi, *Gratiani Canones Genuini ab Apocryphis Discreti*, 4 vols., (Venetiis, 1777), III, 152 sqq.

[43] Council of Rome (1059), c. 3, C. XVI, q. 2, Palea—Jaffé, n. 3532.

[44] Synod of Rome (1078), c. 1, C. XVI, q. 7—Jaffé, n. 5085. Cf. also c. 13, C. I, q. 3; c. 3, C. XVI, q. 7.

[45] II Council of Clermont (1095), c. 46, C. XVI, q. 2—Mansi, XX, 818.

[46] C. 18, C. XVI, q. 7—Jaffé, n. 6609; c. 13, X, *de verborum significatione*, V, 40—Jaffé, n. 4863.

[47] C. 17, C. X, q. 1—*Monumenta Germaniae Historica* (cited *MGH*), *Legum Sectio III*, *Concilia II* (ed. Fridericus Maasen, Hannoveriae, 1893), Legum Sectio II, II, 183.

[48] Schroeder, *op. cit.*, pp. 195 ff.

[49] Cf. Thomassinus, pars II, liber III, cap. 11 sqq. and Michael Ott, "Commendatory Abbots", *Catholic Encyclopedia*, 15 vols., index and 2 supplements, (New York, 1907-1922), IV, 155-156.

[50] Cf. D'Achery, *Spicilegium veterum aliquot scriptorum* (18 vols., Parisiis, 1655-1677), tom. IX, 63; Mansi, IX, 743; XII, 315 sqq.; XII, 371; VI, 1552; XIX, 600.

revenues, but Nicholas I (858-867) demanded immediate cessation to all such usurpation.[51] Agapitus II (946-955) condemned the commendatory holding of Cluny[52] and Nicholas II condemned all laymen who held church property, forbidding all new depredations.[53] Lay control of monasteries and churches ended with Gregory VII (1073-1085).[54]

The return of church properties to ecclesiastical administration, however, often left laymen with the conciliatory rights of investiture and patronage. Investiture was the formality of bestowing the benefice upon the beneficiary: it involved spiritual and temporal rights. Patronage consisted in granting laymen the privilege of presenting (but not of approving or investing) a cleric for an office.[55]

A Synod of Rheims in 1148 admirably summed up the wholesome canonical spirit in regard to church property administration:

> Decernimus etiam ut laici ecclesiastica tractare negotia non praesumant. Sed episcopi, abbates, archiepiscopi, et alii ecclesiarum praelati de negotiis ecclesiasticis, maxime de illis, quae spiritualia esse noscuntur, laicorum iudicio non disponant, nec propter prohibitionem ecclesiasticam dimittant iustitiam exercere.[56]

[51] Letter to the Archbishop of Vienne (862)—Mansi, XV, 449.

[52] Mansi, XVIIIa, 1406.

[53] Cann. 4, 8, Council of Tours (1060)—Mansi, XIX, 925.

[54] Cf. Epist. 19—Mansi, XX, 302; Mansi, XX, 391, Mansi XX, 495.

[55] Administration of temporalities was only indirectly involved in these abusive institutes; besides, their history is too well known in the treatises of public ecclesiastical law to merit special attention here. Cf. The General Council, held at the Lateran (1139) (canon 25): ". . . laymen, no matter how devout they may be, have no authority to dispose of ecclesiastical property."—Schroeder, *op. cit.*; Mansi, XXI, 532.

[56] C. 2, X, *de iudiciis*, II, 1; Mansi, XXI, 713. *Gl. Ord.* ad h.c., s.v. *non praesumant*: ". . . delegari tamen possunt saltem causae pecuniariae, sive huiusmodi mere civiles, ut hic colligitur, et in laicos etiam de talibus compromitti. Papa vero civiles, criminales et spirituales causas potest laico delegare."

The IV General Council of the Lateran in 1215 reiterated the ancient dictum that laymen are given no power to dispose of church matters, since they should obey rather than command.[57]

With a decline of abusive customs, there arose in the late middle ages the *Consilium Fabricae*, which granted to laymen, in conjunction with the official ecclesiastical administrator, a sort of *nudum ministerium* or assistance in the management of church funds. The clearest previous instance of such consultive administration was in the Council of Carthage (407) which requested five "*executores*" for handling church needs.[58]

Church fabrics became common in England [59] and Germany in the XIII century,[60] but restrictive legislation followed almost immediately.[61]

Cardinal Campeggio, Cardinal Legate of Germany, in his Reform of the Clerical Life (1524), finally rounded out the definitive reform in property administration prior to the Council of Trent, and determined the terms under which laymen could share in managing church goods.[62]

[57] C. 12, X, *de rebus ecclesiae alienandis vel non*, III, 13; Mansi, XXII, 980.

[58] Taken from the *Collectio Dionysii Exigui*—Mansi, III, 1113.

[59] Constitution of St. William Fitzherbert, Archbishop of York (1153)—Mansi, XXI, 769 (Thomassinus remarked, "Ea primum occasione laici ad Fabricas ecclesiarum vocati sunt"—pars III, liber II, cap. 16); Synodal Constitution (1214) of Richard, Bishop of Salisbury, c. 42—Mansi, XXII, 1104; Constitutions of St. Edmund Rich (1236), Archbishop of Canterbury, c. 26—Mansi, XXIII, 416; Synod of Worcester (1240), c. 35—Mansi, XXII, 699; Synod of Exeter (1387), c. 12—Mansi, XXIV, 783.

[60] Synod of Cologne (1300), cann. 14, 15, 16—Mansi, XXV, 15.

[61] Council of Würzburg, can. 35—Mansi, XXIV, 943; Decree of Archbishop Robert Winchelsey of Canterbury (1300) Mansi, XXV, 5-9; Council of Lavaur (1368), can. 91—Mansi, XXVI, 2011; Council of Salisbury (1420), can. 53, Mansi, XXVIII, 977. Thomassinus (pars III, liber II, cap. 36, n. 7) commented: "Nec enim tam alienum quidquam fingi potest ab usitatissimis olim ecclesiae legibus, moribus, et conciliorum statutibus, quam rerum ecclesiae temporalium dispensationem laicis committi."

[62] Laymen could be called to help in the church curia under the pastor or upon his death or when the parish was long vacant, a system tolerated be-

## 2. *After the Council of Trent*

By the time of the Council of Trent all serious abuses of lay administration had been brought under control. Only the rise of nationalism, in which states demanded control of church property and even liquidated ecclesiastical holdings, constituted a serious threat to ecclesiastical immunity.[63]

After preliminary discussions of certain points of administration,[64] the Fathers of the Council of Trent clearly determined three things:

a) the supervisory authority of the bishop or the local ordinary in regard to all administration in the diocese, with the right of an annual accounting from administration; [65]

b) the admissibility of laymen to administrative positions within the diocese, whether as actual administrators or as advisors; [66] and

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cause: 1) thus laymen were inclined to serve generously; 2) pastors did not relish asking for revenues; 3) lay management reduced suspicions of clerical usurpation of church property. However, laymen served only as executors, and without hierarchical approval could not act at all—Cf. Mansi, XXXIII, 1029 sqq.

[63] Cf., *e.g.*, the property suppressions of the French Revolution, the laicization of the Prussian Kulturkampf in the late 19th century and the French "Municipal Law" of 1884—Van Hove, "Buildings, Ecclesiastical", *Catholic Encyclopedia*, III, 41. Comyns maintained that traditional ecclesiastical discipline in these matters was not changed by Trent, particular councils or the canonists—*Papal and Episcopal Administration of Church Property*. The Catholic University of America Canon Law Studies, n. 147 (Washington, D. C.: The Catholic University of America Press, 1942), p. 48; cf. Wernz, *Ius Decretalium*, 2. ed., 6 vols., (Romae et Prati, 1906-1913), III, n. 151.

[64] *Concilium Tridentinum, Diariorum, Actorum, Epistolarum, Tractatuum Nova Collectio*, Ed. Societas Goerresiana, 13 vols. incomplete (Friburgi-Brisgoviae: Herder, 1901-1938), V, 841; VIII, 924-926. ". . . ecclesiae bona sunt pauperum, et curatores ecclesiarum non sunt domini, sed dispensatores." —*ibidem*, IX, 845; cf. also XII, 599.

[65] Sess. VII, *de ref.*, c. 15; cf. the Constitution, *Quia contingit*, Council of Vienne (1311), restated by the Council of Trent in chapter 15 of sess. VII—c. 2, *de religiosis domibus ut episcopis sint subiectae*, III, 11, in Clem.; sess. XXII, *de ref.*, c. 9. Despite the clarity of the provision for annual accountings, the point was bitterly contested in following centuries.

[66] Sess. VII, *de ref.*, c. 15: sess. XXV, *de ref.*, c. 8; sess. XXII, *de ref.*, c. 8.

c) the penalties for any usurpation of church property.[67] Excommunication, the threatened sanction for violation of canonical immunity in administration, was to be issued rarely and with discretion.[68]

Benedict XIV (1740-1758) repeated the Council's demand that all administration, clerical and lay, respect the bishop's rights, particularly by rendering him an annual accounting.[69] Pius VII (1800-1823) attacked lay trustees in the Philadelphia "Hogan Schism" for their usurpation of ecclesiastical prerogatives, and insisted that laymen had no control over church property.[70] Gregory XVI (1831-1846) issued a similar criticism of the trustees of Gibraltar, recalling the possible excommunication for lay intrusions.[71]

The Sacred Congregation of Rites and the Sacred Congregation of Bishops and Regulars settled two important points in regard to lay administration:

a) the relation between pastors and certain types of lay administrators; [72] and

b) the cumulative rights of lay boards of administration.[73]

[67] Sess. XXII, *de ref.*, c. 11; sess. VII, *de ref.*, c. 15; sess. XXII, *de ref.*, cc. 8, 9, 11; sess. XXV, *de ref.*, c. 8. Patrons had no right of administration—sess. XXIV, *de ref.*, c. 3; tithes were restricted—sess. XXIII, *de ref.*, c. 18. Laymen, however, could serve in some administrative capacity even in Cathedral churches—sess. XXII, *de ref.*, c. 9.

[68] Cf. sess. XXII, *de ref.*, c. 11; sess. XXV, *de ref.*, c. 3.

[69] Const. *Ad militantis*, 30 mart. 1742, 32—*Codicis Iuris Canonici Fontes cura Emi Petri Card. Gasparri editi*, 9 vols., (Romae [postea Civitas Vaticana]: Typis Polyglottis Vaticanis, 1923-39 [Vols. VII-IX *ed. cura et studio Emi Iustiniani Card. Serédi*]), (cited *Fontes*), n. 326.

[70] Litt. ap. *Non sine magno*, 24 aug. 1822, 1, 3—*Fontes*, n. 480.

[71] *Breve ad Episcopum Heliopolotanum*, Vic. Ap. Gibraltariae (*De Aedituis*) 12 aug. 1841—*Acta et Decreta Sacrorum Conciliorum Recentiorum, Collectio Lacensis*, 7 vols. (Friburgi-Brisgoviae: Herder, 1870-92), (cited *Coll. Lac.*), III, 549.

[72] S.R.C., *Urbis et Orbis*, 12 ian. 1704—*Fontes*, n. 5733; *Nullius Guastallae*, 9 iul. 1718—*Fontes*, n. 5756; *Perusina*, 9 iul. 1718—*Fontes*, n. 5757.

[73] Cf. *supra*, footnote 62; also S. C. Ep. et Reg., *Lucana*, 11 febr. 1842—*Collectanea in Usum Secretarii Sacrae Congregationis Episcoporum et Regu-*

Various regulations for lay administration and varying forms of group administration were established, many of which form part of present Code law.

The Sacred Congregation of the Council allowed laymen to serve as administrators of the *Fabricae Ecclesiarum*, and likewise of hospitals, colleges, pious institutions, charitable funds and confraternities. Like the authors, however, the Congregation distinguished between various types and degrees of administration, allowing to laymen only provisional temporal administration.[74] Notably, the Congregation was responsible for specifying the nature, functions and demands of administration:

> . . . administratio est rerum gubernatio: omnia fert quae temporis, rerum, negotiorum necessitate, circumstantiis, opportunitate magis congruere censeat qui gubernat nimirum qui administrat patrimonium suae fidei concreditum; ideoque administrator omnia explere valet, quae concreditae sibi rerum gubernationi magis congruere ac expedire existimet.[75]

This definition applied to both ecclesiastical and lay administrators, upon whom devolved the same general restrictions and requirements.[76]

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*larium*, cura A. Bizzarri Archiepiscopi Philippensis Secretarii edita (2 ed., Romae, 1885), pp. 528-530 (hereafter cited *Coll. S. C. Ep. et Reg.*); *Amalphitana*, 6 aug., 1585—*Fontes*, n. 1403; *Aliphana*, 31 iul. 1637—*Fontes*, 1752; *Ripana*, 17 maii 1841—*Fontes*, n. 1930; *Camerinen.*, 18 febr. 1842—*Fontes*, n. 1935.

[74] S.C.C., *Savonen.* 8 febr. 1844—*Thesaurus Resolutionum Sacrae Congregationis Concilii* (167 vols., Romae, 1718-1908), XIII, 34 (hereafter cited *Thesaurus*); also *Ianuen. Litterarum Apostolicarum*, 24 mart. 1838—*Thesaurus*, XCIX, 76. Cf. Van Espen, *Ius Ecclesiasticum Universum* (10 vols. in 5, Lovanii et reperitur Lugduni, 1778), pars II, sect. IV, tit. v, c. 1.

[75] S.C.C., *Callien.*, 26 ian. 1839—*Thesaurus*, C, 5.

[76] The provisions of this Sacred Congregation form a firm basis for present Code law, but presentation of its numerous and extensive responses lies beyond the scope of this summary; however, the reader is referred particularly to the following decrees and replies: *Thesaurus*, LVII, 103; CXIII, 393; LI, 130; also *Fontes*, nn. 3646, 3651, 4036, 2205, 3135, 3143, 3150, 2226, 2234, 2291, 3017, 2773.

One of the most thorough and exemplary plans for lay cooperation in church property administration was drawn up for the dioceses of Holland (the Archdiocese of Utrecht and its suffragan sees) and approved by the Sacred Congregation for the Propagation of the Faith. In its decree, the Congregation, assembled in plenary session, approved a set of statutes which provided for "parish church councils of administration", giving careful attention to:

1) the nature of these councils;
2) the requisites in the lay members;
3) the scope of lay administration;
4) the rights reserved to the pastor of the parish;
5) the rights of the local ordinary over all administration.[77]

Most of these provisions have been transferred bodily into *The Code of Canon Law*.[78]

Concordats likewise often determined the details of lay administration.[79] The Sacred Roman Rota clarified the nature of administration, calling it a sort of commission dependent on the terms of a mandate.[80]

Because of the rise of "Trusteeism" in the United States of America, the Holy See condemned the lay assumption of rights over ecclesiastical temporal property,[81] and insisted on specific rules for the choice and use of laymen on church coun-

[77] S. C. de Prop. Fide (C. G.), 21 iul. 1856—*Collectanea S. Congregationis de Propaganda Fide*, 2 vols., (Romae, 1907), (cited *Collectanea S.C.P.F.*), n. 1127.

[78] Cf. esp. canons 1182-1185.

[79] Concordat with Baden (1859)—Nussi, *Conventiones de Rebus Ecclesiasticis inter Sanctam Sedem et Civilem Potestatem* (Moguntiae, 1870) pp. 336-338; also Concordat with Austria (1853), *op. cit.*, pp. 316-317, and with Württemberg (1857), *op. cit.*, pp. 326-327.

[80] S.R.R., *Mediolanen. (Crediti)*, 20 febr. 1913, *coram R.P.D. I. Mori*, Dec. XV, n. 5—*Sacrae Romanae Rotae Decisiones seu Sententiae quae prodierunt ab anno 1909* (Romae: Typis Polyglottis Vaticanis, 1912 ——), V (1913), 164.

[81] Litt. ap. *Non sine magno*, 24 aug. 1822—*Fontes*, n. 480. Cf. Humphrey J. Desmond, "Incorporation", *Catholic Encyclopedia*, VII, 719.

cils.[82] Leo XII (1823-1829) sanctioned these demands by his own letter to Bishop Rosati of St. Louis.[83]

Accordingly, the provincial councils of Baltimore drew up careful rules governing lay cooperation in church property administration[84] and parish boards were approved under specific conditions,[85] although the Holy See remained unfavorable to the trustee system in general.[86] Later, the I Plenary Council of Baltimore (1853) adopted all the legislation of the provincial councils, which then became law for the United States.[87]

The II Plenary Council also provided for a lay diocesan econome, who would be not an *administrator ad omnia*, but

[82] Bishops must: 1) choose only men of proven piety; 2) lay down definite limits, so that trustees could not dismiss the pastor or deny him his due salary; 3) insist that all pastoral functions remain independent of lay trustees; 4) ensure the concurrence of lay trustees with the ordinary in all sacred matters —*Letters of the Sacred Congregation of the Council* to Archbishop Marechal of Baltimore, 27 July, 1822—De Martinis, *Ius Pontificium de Propaganda Fide*, Pars I, 7 vols., (Rome, 1888-1897); Pars II, (Romae, 1909), Pars I, v. IV, 621-622.

[83] Litt. ap., *Quo longius*, 16 aug. 1828—*Bullarium Pontificium Sacrae Congregationis de Propaganda Fide* (8 vols., Romae, 1839-1858), V, 42-43.

[84] *Epistola Patrum Concilii Baltimorensis Provincialis I*, ad Sanctum Pontificium, 24 oct. 1829—*Coll. Lac.*, III, 20; Decreta Conc. Prov. Balt. I (1829)—*Coll. Lac.*, III, 27.

[85] Cf. Instructio S. C. de Prop. Fide circa Decreta a Synodo Provinciali Baltimorensi edita, 28 iun. 1830—*Coll. Lac.* III, 22; Decreta Conc. Prov. Baltimorensis VIII (1885), c. 5—*Coll. Lac.*, III, 161; Acta Concilii Provinciae Neo-Eboracensis III (1861), Congregatio Sexta Privata—*Coll. Lac.*, III, 296; Decreta Conc. Prov. Cincinnatensis III (1861), Decr. IV—*Coll. Lac.*, III, 225; Decreta Conc. Prov. Neo-Eboracensis III (1861), Decr. VIII—*Coll. Lac.*, III, 298.

[86] Decretum Sacrae Cong. de Prop. Fide, kal. febr. 1862—*Coll. Lac.*, III, 228. The solution to the American problem came with the general adoption of the New York State system of trustee administration, which allowed two laymen to serve on a board composed of the bishop as president, the vicar-general as vice-president, and the pastor as secretary-treasurer. Cf. Humphrey J. Desmond, "Incorporation", *Catholic Encyclopedia*, VII, 719; Dignan, *A History of the Legal Incorporation of Catholic Church Property in the United States ((1784-1932))* (New York: Kenedy, 1935), pp. 206-209.

[87] Decr. II—*Concilium Plenarium Totius Americae Septentrionalis Foederatae* (Baltimore, 1853), p. 44.

merely an executor of the bishop's wishes.[88] In virtue of canon 6, § 1, these and all other provisions governing parish boards of administration remain in force in the United States of America.[89] The most comprehensive step was the general adoption of the religious corporation system, initiated in New York (1863) and later recommended by the Holy See for all American dioceses.[90]

The parish council of administration did in fact become universally the most common method with reference to church property administration, and received full legal sanction in *The Code of Canon Law*.[91]

## Section II. The Nature of Temporal Administration

When the Code speaks of the administration of temporal goods in the Church, it considers administration as distinct from the acquisition and alienation of property, except insofar as these latter functions are indirectly related with administration; strictly speaking, the Code provides for lay cooperation only with administration.[92] The acquisition or alienation of property does not properly pertain to those who

[88] Decr. 75—*Concilii Plenarii Baltimorensis II Acta et Decreta* (Baltimore, 1868), pp. 55-56. The III Plenary Council (1884) adopted the legislation of the II Plenary Council—*Acta et Decreta Concilii Plenarii Baltimorensis Tertii, Decretum de fideliter Servandis Omnibus Concilii Plenarii Baltimorensis Secundi Decretis* (Baltimore, 1886), p. 3.

[89] Cf. Barrett, *A Comparative Study of the Councils of Baltimore and the Code of Canon Law*, The Catholic University of America Canon Law Studies, n. 83 (Washington, D. C.: The Catholic University of America, 1932), pp. 188, 198.

[90] S.C.C., *De Methodis Possidendi et Administrandi Bona Ecclesiastica in Statibus Americae Foederatis*, 29 iul. 1911—*The American Ecclesiastical Review*, (Vols. I-XXXII, Philadelphia, 1889-1905; from 1905: *The Ecclesiastical Review*, Philadelphia, 1905-43; from 1944: *The American Ecclesiastical Review*, Washington, D. C.), XLV (1911), 585-586; also found in Bouscaren, *The Canon Law Digest*, 2 vols. and supplement, (Milwaukee: Bruce, 1934, 1943, 1948), II, 443-445; cf. Edward J. McGuire, "New York", *Catholic Encyclopedia*, XI, 38, and Dignan, *op. cit.*, pp. 245-268.

[91] Canons 1183-1185.

[92] Cf. canons 1495, § 1; 1522; 1183.

serve simply as administrators, and thus care for property already acquired; if they are asked to assist in the other functions, this exceeds their proper office as administrators, at least in the *ordinary* sense, while it allows them participation in a function of *extraordinary* administration.[93]

Administration, then, denotes all acts which concern the conservation and improvement of property already acquired, as well as the legitimate receiving, safekeeping, increase, and especially application of the fruits and income, of ecclesiastical property.[94] Administration of property may be compared to the government of persons; just as the proper function of government is the preservation of the wellbeing of persons in order to help them to their proper end in life, so the administration of property consists in preserving all temporal things which have been acquired and in using them for their destined end. This function comprises three things: 1) the preservation and improvement of the property which has been acquired; 2) the natural or artificial production of fruits or income from such property; 3) the useful application of such fruits or income to the proper persons.[95]

"Ecclesiastical property" or goods in general includes all temporal goods which are under the dominion of the Church and are destined for its own ends and use by legitimate authority, as for worship, the care of the poor, the training and support of the clergy, the promotion of pious works, etc.; in a word, all temporalities which belong either to the Church Universal and the Apostolic See, or to some other moral persons in the Church. This includes goods which are: 1)

[93] The acquisition of ecclesiastical property is denied to all private persons explicitly by canons 1503 and 1546; it is always subject to the regulations of the Holy See, the local ordinary or other legitimate superior, and can be called extraordinary "administration"; the same holds for alienation. Cf. canons 1536, § 2; 1515, § 1; 1530, § 3; 1541; 1542.

[94] Coronata, *Institutiones Iuris Canonici ad Usum Cleri*, 2. ed., 5 vols., (Taurini-Romae: Marietti, 1939-47), II, § 1058; Wernz-Vidal, *Ius Canonicum*, IV (II), n. 746; Beste, *Introductio in Codicem*, 2. ed., (Collegeville, Minn., 1944), p. 738.

[95] Bouscaren-Ellis, *Canon Law*, p. 735; Beste, *loc. cit.*

*corporeal*, i.e., palpable or perceptible to the senses, such as a field, a house, money; or *incorporeal*, that which is not palpable, not perceivable by the senses, but by the mind only, such as legal rights and obligations regarding property; 2) *movable*, that is, those things which can be transferred from place to place, such as livestock, grain, merchandise, money; or *immovable*, that which cannot be moved from place to place either naturally (as a field or a building) or legally (as windows, doors, fixtures, lights, plumbing and the like).[96]

The right of administration flows from the right of proprietorship. In the case of the Supreme Pontiff the right of administration arises likewise from his power of jurisdiction. By reason of his primacy of jurisdiction, he is the supreme administrator and dispenser (manager) of all church property. The local ordinary has the right and the duty of carefully watching over the administration of all church property in his territory as long as this property has not been withdrawn from his jurisdiction.[97]

All church property is held by moral persons in the Church, and moral persons have the status of minors in Church law. Now, the property of minors is subject to administration under special laws in every society. Hence, it is not surprising to find various classes of administrators in Canon Law; these administrators are usually clerics, but laymen are not excluded.[98]

No part in the possession or exercise of the power of jurisdiction is allowed to laymen, since they are not members of the hierarchy of jurisdiction and hold no ecclesiastical office.[99]

[96] Cf. canon 1497; Bouscaren-Ellis, *op. cit.*, p. 734; Wernz-Vidal, *op. cit.*, IV (II), n. 736; Beste, *op. cit.*, p. 722, where he mentions as immovable goods also forests, churches, chapels, seminaries; Coronata, *op. cit.*, II, n. 1034.

[97] Cf. canons 1518, 1519, § 1.

[98] "Administrator bonorum personarum moralium ecclesiasticarum ad instar tutoris suo officio fungi debet erga bona quae nomine Ecclesiae administrat . . . "—Coronata, *op. cit.*, II, n. 1058; Bouscaren-Ellis, *op. cit.*, p. 757. Cf. canons 1521, §§ 1, 2; 1182; 1183; 1476; 1489, § 3. Cf. Comyns, *Papal and Episcopal Administration of Church Property*, p. 48.

[99] Cf. canons 118, 199.

It follows therefore that laymen can neither be officially responsible for the administration of Church properties, since this clearly involves a share in the exercise of jurisdiction.[100] However, canonical history demonstrates that laymen have often been given some part in the management of temporal goods, and even today the practice is canonically permissible and rather widespread in the Church.[101]

How explain this apparent contradiction in law and practice? It is necessary to return again to the distinction whereby an office can be taken in a broad or a strict sense and can also be distinguished from the *munera* or acts of the office itself or its exercise.

Ottaviani strongly states that it is most certain that the faithful have no right whatsoever in regard to the governing and administration of ecclesiastical matters, whether temporal or spiritual, as is obvious in the constitution of the Church, from the distinction of rulers and subjects of ecclesiastical power. He reasons that no power or right in temporal affairs can be argued in regard to the members of the Church or of any community within the Church. Although temporal goods are offered for the spiritual advantages or benefit of the faithful, these goods are not in the possession or disposition of the laity; even if these ordinary members of the Church donated property or other goods, still the Church accepts such gifts only under the condition that they remain in its own free possession and under the management of that moral body to which they were made over.[102]

Property, then, in actual practice, while subject to the Supreme Pontiff, the local ordinary or other canonical superiors, most often is administered by the rectors or pastors of churches and chapels.[103] Ottaviani allows, in interpreting the common law, the use of laymen in the function of "ex-

[100] Cf. prenote to this article; also canons 1518; 1519.

[101] Cf. Sections I and III, this article; canons 1182, 1183, 1476, 1489.

[102] Ottaviani, *Institutiones Iuris Publici Ecclesiastici*, I, n. 205.

[103] Cf. Wernz-Vidal, *op. cit.*, IV (II), n. 733; canon 1521.

perts" or skilled technicians, advisory collaborators in administration, and under complete dependence and supervision from ecclesiastical authority. No other administrative right accrues to them except that which the law allows them to exercise *in the name of the Church* and of ecclesiastical authority.[104]

*Per se*, then, laymen are completely excluded from all administration of ecclesiastical goods, and *a fortiori* from dominion over ecclesiastical property.[105] However, the use of laymen in some capacity as administrators is certainly of great help to the Church, since laymen are often more skilled in administrative affairs and can facilitate this important part of the Church's activity. In every case of lay cooperation, however, the final authority and responsibility always rests with the hierarchy, which alone possesses and officially exercises the power of jurisdiction in whatever form. Above all, Coronata insists that a layman cannot be designated the *sole* administrator of ecclesiastical goods; by the terms of foundation or erection (*i.e.*, in the charter of any moral body in the Church), or with the permission of the local ordinary in accord with common law, laymen together with clerics may have some share in administration, never, however, holding universal administrative faculties. Even in this case, all administration, since it is ecclesiastical, is in the name of the Church and must respect the right of the ordinary to visita-

104 Ottaviani, *loc. cit.*; the same authority insists that in the early days of the Church only clerics assisted the ordinaries in the administration of church property; when by tradition laymen received some part in this function, it was always expressly provided that they were simply *auxiliares*, and exercised their *munera* exclusively under the supervision and authority of the ecclesiastical hierarchy—*loc. cit.*; cf. Conc. Trid., sess. XXII, *de ref.*, c. 9; Wernz-Vidal, *op. cit.*, IV (II), n. 740.

105 Wernz-Vidal, *loc. cit.* Any civil law which gives laymen rights of intervention in ecclesiastical matters is illegitimate. Hence Pius X forbade the *adsociationes cultuales* set up by the French Government in the *Lex separationis*, 9 dec. 1905, art. 18-22—Litt. encycl., *Gravissimo*, 10 aug., 1906. Pius XI allowed the trial of a new kind of diocesan association conformable with the Code—litt. encycl., *Maximam gravissimamque*, 18 ian. 1924.

tion, an accounting and the determination of the manner of administration.[106]

Finally, laymen cooperate primarily with the ordinary administration, the normal conduct of business involved in the management of temporal affairs, rather than with extraordinary administration, which concerns unusual transactions dependent on higher ecclesiastical authority. Even here, however, laymen often serve as consultors and even as agents.[107]

## Section III. The Modes of Lay Cooperation with Ecclesiastical Temporal Administration

All ecclesiastical property is held by moral bodies within the Church, such as dioceses, parishes, etc. Hence, the property of these moral persons is usually committed to the active administration of some board or council, which in turn may elect an individual physical person as its agent for ordinary affairs. Both by ecclesiastical and civil law, laymen often serve not only on the council or board of certain moral bodies, but also as the practical administrative representative of the moral body or its council, for the duties of ordinary administration.

### *1. Laymen as members of administrative boards*

#### a) Diocesan councils

Canon 1520, § 1 provides that the ordinary, to whom all administration in the diocese is committed, should form a special committee or council to assist him in fulfilling his administrative tasks. Although the more common practice is to constitute the diocesan consultors as the diocesan board of administration, there is no restriction against lay member-

[106] Coronata, *op. cit.*, n. 1621, § 2; cf. also Blat, *Commentarium Textus Codicis Iuris Canonici* (5 vols. in 6, Romae Libreria "Angelico"), IV, 435.

[107] Compliance with the demands of the Church for necessary funds can hardly be cited as lay cooperation with an ecclesiastical power, since this involves no positive act of jurisdiction or of collaboration with it. Cf. canon 1496; Ottaviani, *op. cit.*, I, n. 203.

ship on the board.[108] In fact, many dioceses, particularly those which are incorporated in civil law, include two or more laymen as trustees of the corporation with the right to vote on matters affecting the corporation.[109]

According to the tenor of Canon Law, laymen serve in such capacity as consultors, not as *sui iuris* administrators, and their vote is always consultative (not deliberative), unless provided otherwise in the law or the charter of foundation of institutions.[110] Civil law often provides that acts of the council are valid only when signed by the bishop or when approved by the entire board.[111]

### b) The *Consilium Fabricae* or Parish Board [112]

[108] Canon 1521, § 2; Wernz-Vidal, *ibidem*, n. 750.

[109] Cf. Beste, *op. cit.*, p. 756.

[110] Cf. canons 1521, § 3; 1532, § 2, Wernz-Vidal, *loc. cit.*

[111] Dignan, *A History of the Legal Incorporation of Catholic Church Property*, pp. 245-268.

[112] "Ex iuri communi nulla est Consilii fabricae *necessitas*; permittitur vero eius constitutio arbitrio ordinarii loci etiam ubi hucusque consilia huiusmodi non exstiterunt." Coronata, *op. cit.*, II, n. 758; Augustine *A Commentary on the New Code of Canon Law*, 8 vols., (St. Louis: Herder, 1925-31), VI, 57; Bouscaren-Ellis, *op. cit.*, p. 592.

Various names have been given to the group of several laymen who were chosen to assist ecclesiastical authority in handling church goods or property. The *Consilium Fabricae* was the original and most common name given to the actual committee and derived from the word *fabrica*, which applied not only to the goods belonging to a church but also to the administration of these very goods. Cf. Van Hove, "Buildings (Ecclesiastical)", *Catholic Encyclopedia*, III, 41. This council or committee should be understood whenever the writer refers to the "council of the fabric", the "financial committee", the "board of trustees", etc.

Numerous designations have been used in various nations and councils for the individual layman serving on the council, viz. *oeconomi, provisores, executores, curatores, fabricierii, aeditui, operarii, vitrici, mamburni, luminarii*, etc. English terms included the following: economes, bursars, vestrymen, churchwardens, sidesmen, stewards, trustees, etc. On occasion laymen served not simply as members of a board, but as actual administrators, especially in the case of hospitals, and in these cases were simply called "administrators". Cf. Van Hove, "*Fabrica Ecclesiae*," *Catholic Encyclopedia*, V, 744-745; Beste, *op. cit.*, p. 570.

Even more frequently laymen act as members of the parish boards of administration, also in the capacity of trustees or auxiliary members. Together with the official ecclesiastical administrator, they comprise the council of the Church *fabrica*.[113] Hence, the *fabrica* is defined as a college, consisting of laymen of a determined locality, and established for the administration of ecclesiastical goods destined both for the upkeep of the church or other structures destined for divine worship, and for the provision of funds necessary for worship. Together with the chairman or ecclesiastical administrator, the group constitutes an ecclesiastical moral person. The council is said to consist of laymen, not in the sense that its members must necessarily be laymen, but because it may include laymen as well as clerics among its officers.[114]

The purpose of the church *fabrica* is to look after the administration of church goods, particularly the funds or other property intended for repairs or decorations and for the conduct of public worship.[115] Wernz-Vidal contend that the parish council is also competent to administer the fruits of:

a) pew-rent fees;
b) offertory collections;
c) collections after special sermons;
d) house-to-house collections for the parish, mission or school;
e) offerings made before special images or statutes; besides,
f) the council is responsible for funds to repair or restore the Church [116]

Hence, the fabric is actually an ecclesiastical institution or a moral person, to which all the temporal goods and rights of

[113] Which is a collegiate body, to which the rules of collegiate groups apply —cf. canons 1183, 105; Wernz-Vidal, *ibidem*, n. 777.

[114] Coronata, *op. cit.*, II, n. 750. The Council of Trent (sess. XXII, *de ref.*, c. 9) presupposed the existence of such councils with lay members.

[115] Canons 1184, 1182, § 1.

[116] *Op. cit.*, IV (II), n. 776, footnote 90. It often happens that councils or committees also administer the property intended for schools, the poor, pious works, etc.—*ibidem*, n. 775.

the particular church (or other institution) are accredited and by which they are managed. Parish institutions whose charter provides for special administration may not be managed by the *fabrica* or parish council.[117]

Various forms of *fabricae* exist in the Church, not all of which meet strictly with ecclesiastical demands for clerical control of temporalities, since civil law often intrudes upon ecclesiastical immunity in temporal matters.[118] Although the Code does not specify any preference in the internal constitution of the *fabrica*, the great majority of parish councils in the United States follow the pattern of civil corporation law, which is more or less uniform for all the states, and very often makes special provisions for the constitution and direction of church corporations. American civil law, which has practically been adopted as canonical practice for parish (and diocesan) corporations, safeguards completely the demands of canons 1519, § 2 and 1182, § 1, that all administration be under the direction of the ordinary of the diocese and of the pastors (or rectors) of churches,[119] especially so when the

[117] Canon 1182, § 2; Wernz-Vidal, *ibidem*, n. 776. The same authors suggest the use of lay "procurators" to administer parish church funds, and distinguish them from the council of the fabric as such. In this sense, they would be administrative agents as considered in paragraph 2 of the section. However, the Code seems to imply that all assistants to the rector in administration of church property constitute a council of administration. Cf. canon 1183; Wernz-Vidal, *ibidem*, n. 748.

[118] Originally, the *fabricae* were ecclesiastically approved, juridical institutes, distinct from the parochial benefice, and in which laymen had a great part, as in collecting, administering and protecting the goods necessary for the service of the churches (or their repair) and for the conduct of worship. This practice was suggested by the aptitude of laymen for such tasks—Bouix, *Tractatus de Principiis Iuris Canonici* (3. ed., Parisiis, 1882), p. 617.

The *fabricerii* were named by ecclesiastical authority, were subject to recall by the same, and were bound by the obligation of an annual accounting; lay power intruded seriously, naming the members of the fabric and demanding an accounting to civil authorities. Cf. Ottaviani, *op. cit.*, I, n. 205; Thomassinus, *op. cit.*, lib. III, c. 36, n. 6; *Collectanea S.C.P.F.*, n. 1127, §§ 6, 15.

[119] Concerning the possession and administration of property in the United States of America, the Holy See evidenced explicit preference for the "corporation method" in use in the state of New York and adopted by many other states—Cf. Beste, *op. cit.*, pp. 583, 758-759.

ordinary of the diocese serves as president, the vicar-general as vice-president and the pastor as secretary-treasurer, while laymen chosen by the higher officers of the board [120] serve as trustees and complete the board. All the rights of corporate administration inhere in this representative board, and all administrative acts are subject to a majority vote of the council; often, however, the by-laws provide for the nullity of any action taken without the favorable vote of the bishop.[121]

The parish council, as a moral person, also has the right, exercised through its members, of court action, of standing at law and of vindicating and defending the rights of the church or institution.[122] Despite civil intrusion into the constitution of this institute, however, and the resultant perversion of the auxiliary, commissary nature of the *fabrica*, the Church insists on the strictly limited cooperation allowed to lay members of the administrative board.[123]

c) Other administrative boards

Many other moral persons and pious institutes make use of the board or council method of administration, although properly their temporal management falls to the rector of the institute.[124] Canon law again does not prevent lay membership on such councils in a corporative and advisory capacity; should the institute be erected into a civil corporation, lay trustees may be called to serve on the board as in the instances of diocesan or parish corporations, under practically identical terms, dependently on the specific corporation laws in effect and the by-laws of the moral body as approved by ecclesiastical authority.[125] Consequently, such ecclesiastical

[120] Canonically, by the ordinary or his delegate—canon 1183, § 2.

[121] Beste, *op. cit.*, p. 758.

[122] Canons 1649, 1653; Wernz-Vidal, *ibidem*, n. 777.

[123] Wernz-Vidal, *loc. cit.*, footnote 92.

[124] Canon 1489, § 3; the terms of the charter are of prime importance in this matter.

[125] It should be noted that pious institutes remain lay, and their property is not ecclesiastical (hence, not subject to the laws of ecclesisatical admin-

institutes as hospitals, orphanages, burses, funds, etc., can be managed by a board or council, which not infrequently will be incorporated as a moral person; such a council may include laymen as trustees, according to the provisions discussed above.[126]

*2. Laymen as administrative agents*

Besides their functions as board members, consultors, technical advisors and trustees, laymen often act as administrative agents or "economes" for moral persons or pious institutes. This form of administration, while demanding far more practical management on the part of the econome or "treasurer", does not imply any greater share or more intimate cooperation in the jurisdictional or authoritative power of jurisdiction. For while it is conceivable that such an administrator might become in some degree responsible for all the details of purchasing and spending of funds and for the upkeep and repair of immovable properties, as well as for all the other requirements of simple, ordinary administration, the ultimate authority remains always with the official hierarchical (or delegated) administrator.

Laymen *de facto* function frequently as treasurers or even as economes in ecclesiastical colleges and in diocesan chan-

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istration), unless they are erected or approved as ecclesiastical institutes. Only in the latter case do they come under consideration here, since administration in lay (i.e. private) institutes is subject exclusively to the terms of foundation. Cf. Beste, *op. cit.*, p. 735, and canons 1513-1571; 1490-1492.

[126] Paragraphs 1 and 2, this section; confer also Beste, *op. cit.*, p. 736.

The temporal conduct of private pious institutes or societies, e.g., The Society of St. Vincent de Paul, private schools, hospitals, etc., which are not established as ecclesiastical moral bodies or aggregated to any existing moral person, depends on the will of the founders, directors or members of the institute, whether clerical or lay, and can be entirely committed to laymen. The ordinary retains the right of visitation and supervision. Cf. canons 336, § 2; 344, § 1; 1515.

The administration of goods in canonically erected societies pertains to the societies themselves under the authority of the ordinary and subject to the terms of canons 691, 697, § 1 and 1525. Hence the societies may select their own form of administration, may possess and manage temporal properties of the association and may elect their own administrators, but must render an annual account to the ordinary and submit to his visitation.

ceries, as well as in hospitals, orphanages and other juridical institutions erected by ecclesiastical authority, but having no stipulated administrator.[127] To them it is committed to handle the regular funds, to keep financial records, to determine the temporal needs of the institute or moral person. Such practical management, however important and useful in the Church, remains a sort of technical assistance, a *nudum ministerium*, the performance of a certain number of the *munera* or tasks connected with the office of administrator in the name of the Church and of the actual, official administrator.

Canon 1521, § 2, seems to imply that laymen can be appointed as administrative agents for the property of churches or pious establishments not provided for by law or the charter of foundation. The decision on the use of lay assistance in such cases lies with the ordinary: he can name one or several agents, divide the administration between many or constitute one of a group as principal administrator, draw up statutes for the administration, etc. All such administration must be carried out in the name of the Church, subject to the visitation, accounting and direction (as to methods) of the ordinary. A prime example of this form of " delegated " administration would be in the choice of an econome to manage the goods of the *mensa episcopalis*, or other common funds.[128]

More remote, material cooperation with ecclesiastical administration, such as that comprised in the duties of: 1) caretakers, sextons, architectural consultants, art experts etc., and of: 2) secretaries, copyists and the like depends entirely on diocesan statutes, custom or the decrees of the ordinary, in conformity with the general tenor of the common law, especially in regard to authoritative or discriminatory acts. Such cooperation, while of obvious importance, does not usually constitute a form of administration, but is a lesser,

[127] Cf. Wernz-Vidal, *op. cit.*, IV (II), n. 748.

[128] While the ordinary is the principal administrator of all diocesan properties, he cannot conceivably administer them without constant and widespread assistance, on the part of both clerics and laity. Cf. Wernz-Vidal, *loc. cit.*

auxiliary function in collaboration with the official, jurisdictional administrators.[129]

## Section IV. Principles Governing Lay Administration

### *1. General Provisions*

All administrators within the Church, whether clerical or lay, are held to the general prescriptions concerning the administration of ecclesiastical temporal goods; since it is beyond the scope of this study to discuss the entire question of administration, it will suffice to note the following points.

The principal administrators in the Church are the Roman Pontiff and the bishops; lesser administrators of all kinds, such as chapters, councils, rectors, lay trustees, etc., are all subject in varying degrees to the chief administrators. Hence, secondary administrators are bound by a special oath, must make a careful inventory, signed by clerics and laymen of an administrative board, of all property under their care, are responsible for vigilance over church property, for the observance of canon and civil law, for the collecting and proper use of revenues and for the care of financial records and other official books and documents. They must pay a just wage to all employees, render an annual account to the ordinary, and may not undertake court action or perform acts of extra-

[129] Likewise, patrons of churches or other ecclesiastical establishments can reserve some right of administration in the charter of foundation, but these terms are invalid unless accepted by the Church; when such terms are lacking, the patron may not interfere at all with administration, although he may demand the right to be heard in matters of alienation. Cf. canons 1448; 1546, § 2; 1532; §§ 2, 3; Wernz-Vidal, *op. cit.*, IV (II), n. 762.

Patrons are bound to be solicitous for the material conditions of the patronal institution and to repair and even reconstruct the church or other buildings as well as supply needed revenues in given circumstances—Canon 1769, § 1. Since the Church does not favor the extension, but rather the suppression of all patronal privileges, the author considers this reference sufficient for the present study—Cf. canons 1450; 1451.

It is not clear whether or not laymen can serve as agents or procurators for religious congregations. However, there is almost always, within the confines of the law, the possibility of selecting an official "econome" who could to some extent solicit the assistance of laymen for technical and practical details of administration.

ordinary administration without the bishop's permission. Although the Church is not responsible for contracts entered into without proper authorization, on the other hand, all administrators who by neglect of duty cause loss to the Church are bound to restitution.[130]

*2. Special Provisions for lay administrators*

a) Appointment and tenure

The appointment of lay administrators of all kinds is reserved to the ordinary or his delegate; similarly, the ordinary can remove them for some serious cause, although they are ordinarily appointed for specific terms.[131] Lay administrators, who have "some part" (*quaedam partes*) in ecclesiastical administration, should be generous, worthy and well recommended for the task, possessing also if possible some knowledge of civil law.[132] Special administrators are usually chosen for three years, unless circumstances urge an extension of term, as when other competent administrators are not available.[133]

For the United States of America, the III Plenary Council of Baltimore stipulated certain conditions for the selection of lay trustees, which remain in force today.[134] The trustees must be at least 21 years of age, they must have fulfilled their Easter precept, and have rented and paid for a pew for one year or otherwise have contributed to the support of the Church. They must send their children to a Catholic school and not hold membership in any forbidden or secret society.[135]

[130] Canons 1519-1528. Illicit alienation or damage to ecclesiastical property without due permission can cause loss of the right of patronage and of the administrative office or faculty; this applies as well to all forms of mismanagement—canon 2347; cf. Chelodi, *Ius Poenale*, § 79; Wernz-Vidal, *op. cit.*, IV (II), n. 763, footnote 170.

[131] Canons 1521, § 2; 1183, § 2.

[132] Canon 1521, § 1; cf. canon 1520, § 1.

[133] Wernz-Vidal, *ibidem*, n. 751.

[134] Cf. *supra*, pp. 183-84.

[135] *Acta et Decreta Concilii Plenarii Baltimorensis Tertii*, n. 287, pp. 164-165.

b) Duties and responsibilities

Apart from the general duties incumbent upon all administrators,[136] the Code demands of laymen only that they administer *in the name of the Church* and recognize the right of the ordinary to visitation, to an accounting and to a specification of the mode of administration.[137]

c) Restrictions on lay administrators

Since the *fabricae* of churches usually consist largely of laymen, and were founded specifically to accommodate the services of lay administrators, it seems that the regulations of canons 1184 and 1185 refer primarily to lay members of church administrative councils.[138]

While the council of the fabric is charged with the proper administration of church property or goods, and with the restoration or repair of the same (canon 1186), lay administrators or members of the board are specifically forbidden to interfere in the spiritual duties connected with the church, such as the conduct of worship, the manner and time of ringing the bells, the order observed in the church and the cemetery, the manner in which collections, announcements and other acts related to divine worship or the ornamentation of the church are carried out, the arrangement of the altar, communion-table, pulpit, organ, choir-loft, benches, pews and all details relating to worship, particularly the use, handling and care of sacred vessels and vestments. The rector (or pastor) has full charge of parish records and undisputed supervision over the sacristans, singers, organists, choir-boys, bell-ringers, grave-diggers and all other ministers and servants, according to local custom and the wishes of the ordinary. In all such matters the rector (or pastor) is free to consult the

136 Cf. *supra*, p. 186.

137 Canons 1521, § 2; 1183. Cf. Wernz-Vidal, *ibidem*, n. 749.

138 Especially since these canons are taken almost literally from the decree of the Sacred Congregation of the Faith governing lay administration—Cf. *Collectanea S.C.P.F.*, n. 1127.

lay members of the fabric, but he is not bound to do so, nor can they insist on being heard or on having their will in these matters, although they may propose freely their recommendations to the principal administrator or to the ordinary, to whom recourse is always open in case of conflict or abuse.[139]

Members of the board and other lay administrators cannot perform acts of extraordinary administration, especially those which infer alienation of property. Hence, they can not accept or renounce an inheritance, a legacy or a donation, buy immovable property, endanger the actual or legal status of objects of art, or monuments, etc., make large loans or burdensome contracts, build a church, destroy it or improve the church building by extraordinary repair, found cemeteries, erect or suppress parish institutions, set fees, arrange collections, make offerings from parish funds, or act in court as plaintiff or defendant in the name of the parish.[140]

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[139] Canons 1184, 1185; cf. Wernz-Vidal, *ibidem*, n. 778.

[140] Cf. canon 1527; *Collectanea S.C.P.F.*, n. 1127, art. 16-20.

# Cases and Studies

## THE RELATION OF THE PARISH PRIEST TO HIS PARISHIONERS AS MEMBERS OF CHURCH-APPROVED SOCIETIES *

This paper will treat briefly of the following section of *The Code of Canon Law*, Book II, Part III, Titles 18 and 19, canons 684 to 725 inclusive. This paper in no way intends to treat of all the subjects covered in the above-mentioned section. Its purpose is to treat only of those parts that fit the scope of this paper. It is not our intention to give a commentary on that section of the Code, but only to find out from that section and from other related sections what should be our relation to our parishioners as members of societies that have been approved by the Church.

Throughout this paper we are leaning heavily and almost exclusively on the dissertation of Father Thomas J. Clarke, written by him in 1943 in partial fulfillment of requirements for the degree of Doctor of Canon Law from The Catholic University of America.

Father Clarke gives the broadest definition of the term association as used by the Code as " a voluntary union, more or less permanently established, of a number of persons striving under their properly constituted leaders for the attainment of a common objective." For our purposes we can further limit that definition by saying that the objective to be sought is always in some way religious in character.

By reason of their character these associations can be divided into ecclesiastical and lay societies. An ecclesiastical society is a free union of the faithful established or approved by ecclesiastical authority for the exercise of some work of piety or of charity not prescribed for all the faithful. Such societies have the characteristic of juridic personality in *The Code of Canon Law* when they have been so constituted by the decree of an Ordinary who has the right to erect them.

* A paper prepared for the Tenth Annual Meeting of the Northwest Chapter of The Canon Law Society of North America, held at Mount Angel Abbey, September 16th and 17th, 1952, by Rev. Paul A. Stecher, Diocese of Yakima.

These ecclesiastical societies are divided by the Code into Third Orders Secular and Pious Unions. The Third Orders Secular consist of those persons living in the world who strive for Christian perfection under the guidance and spirit of some particular religious order. Pious unions are associations of the faithful started for the purpose of helping the members in the exercise of works of piety and charity. If these pious unions are organized *ad modum organici corporis*, that is with an internal hierarchical organization, they are called sodalities. And if the sodality has a very set purpose, namely the increase and enhancement of public worship, it is called a confraternity. Oftentimes these words are used interchangeably and have in most people's minds almost the same meaning. In most cases, as here, this interchange does not make too much difference.

Lay societies are associations to which no *official* ecclesiastical recognition has been given. They are directed and governed primarily by the laity, and are classified as: a) recommended societies, to which recommendation or parise has been given by the Church even though they were not established or formally approved by Church authority, and b) licit societies, which are neither approved nor recommended, but are not contrary to the law of God or the Church, and have as their purpose a work of piety or charity, though these need not be their exclusive purpose.

Though only ecclesiastical societies can attain juridic personality before the Code and thereby hold certain rights, privileges and obligations, lay societies can be organized with an internal hierarchical organization *ad modum organici corporis*, with an authoritative head, officers, members, law, and so forth. But even when so organized they do not become a moral person or possess any rights or privileges as such. The only rights and duties they possess are those which the members have as individuals.

In every religious society the Church has the right of supervision. However, in lay societies not founded by ecclesiastical authority this supervision, though real, is restricted. But in all cases it must be exercised through the proper ecclesiastical superiors. What then is the relation of the parish priest to these associations?

First of all an explanation is sought with regard to ecclesiastical associations erected by the proper ecclesiastical authority. If the parish priest has been appointed as Moderator and/or Chaplain

of the association by the Ordinary, or has been so elected according to an Apostolic privilege, he has true jurisdictional power with regard to both the internal and external relations and actions of the association. However, this jurisdiction can be exercised only in accord with the directions of the appointing Ordinary, to whom all associations in his territory are subject, unless they be exempt by special privilege (cf. can. 690). This jurisdiction must also be exercised only in accord with the statutes of the association. The Moderator and/or Chaplain must see to the safeguarding of discipline. He must have care that the association grows in numbers and in fervor. He has charge of the sacred functions and ceremonies, which according to canon 698 consist of the blessing and imposing of the habit or insignia on members and also of preaching. However the same canon warns that such preaching can be done only in accord with the rulings stated in canons 1337-1342. In all cases the association must follow the law of the Church, and it is the job of the Moderator and/or Chaplain to see to it that the association adheres strictly to the law of the Church and to its own approved statutes.

If the Moderator and/or Chaplain is not the parish priest, he (the parish priest) has no special rights or obligations toward the association; he has but such rights and obligations as he has to all the people in his care. He has the right and obligation to see to it that the association does not in any way hinder or obstruct his proper care of the parish, and further that the Moderator so orders the running of the association that it benefits not only the members but also the whole parish, at least indirectly. And since it is part of his pastoral obligation to see to it that the works of piety and charity are carried on in his parish, it seems to be all to the good for him to encourage and assist such ecclesiastical associations in his parish which have for their set purpose such works of piety and charity.

What is the relation now of the parish priest to recommended and licit *lay* societies? Since these are the ones the pastor will most often come in contact with, we offer a description in a little more detail.

In the Code no specific provision is made for the office of Moderator or Chaplain relative to lay societies. Since, however, there is always present a need for some such office in all lay societies, these should in their statutes advert to this office and make some

suitable provision. Even though such a provision is not a necessity according to the nature of lay societies, a deliberate omission of such a provision in the statutes, or an obstinate refusal to make such a provision once a possible oversight has occurred, would certainly not be conducive to a society's gaining a recommendation from ecclesiastical authority, and would probably subject such an ill-begot society to the act of its suppression. The provision for a Chaplain in the statutes of a lay society would gurantee its being under the proper ecclesiastical vigilance, and would keep it in closer harmony with the common law of the Church. In lay societies the right of selecting a Moderator or a Chaplain remains with the society. However, in many cases this right is given by statute to the pastor or the Ordinary. But even though the Ordinary appoints a Chaplain, or confirms a Chaplain elected by the society, such action does not in any way give ecclesiastical approval to the society, nor does it confer on the one appointed or confirmed any special rights or duties, as is the case with the Moderator or Chaplain of an ecclesiastical society. The Chaplain of a lay society does not have any special faculties as Chaplain; he has only such rights and privileges as he holds with reference to all the people as their pastor.

As stated above, just as for ecclesiastical associations the pastor as such does not have any particular rights, but has only such powers as the Code gives him as pastor, so also here with regard to lay societies. By his office of pastor he possesses an ordinary power of jurisdiction. But he can exercise it fully only in the internal forum. He cannot therefore make laws, pronounce judicial sentences, or punish with ecclesiastical penalties, since the exercise of these powers is reserved by law to the pope and to bishops. Only as a delegate of the pope or the bishop could he function with authority in the external forum. Accordingly, any supervision he exercises over lay societies is restricted to the internal forum as long as this supervision derives simply from his office as pastor of all the souls in his parish. By his office, and therefore *ex justitia*, he is bound to celebrate the divine offices, to administer the sacraments as often as he is reasonably asked to do so, to know his parishioners, to correct the wrong, to show paternal charity to the poor and the wretched, and to instruct the youth. He must watch that nothing contrary to faith or morals be introduced, and he

must foster and institute works of charity, faith and piety. These rights and duties extend to all his parishioners, and from them we deduce his right and duties toward lay societies. And therefore inasmuch as the members of the society are members of his parish, he is bound to minister to them, to know them, to watch lest any error in faith or morality creep into the society, to instruct the members and to encourage them in their works of faith, charity and piety. He is not the *iudex in causis fidei*, but the watchman of the bishop, and therein lies his power and duty in supervising parish societies.

Conversely, the duties of the society depend upon the rights of the pastor, even though the society be independent of the pastor in both internal and external government. The society cannot infringe on the rights of the pastor, nor can the Chaplain, if he is not the pastor, perform those functions which are reserved to the office of pastor. Members of the society can however perform works of charity and piety since such works are not reserved to the pastor. He must foster them and see that they are done, but not always and in all cases do them himself. On this then rests the parish priest's relation to lay societies, that the members of any given society are also his parishioners subject to his pastoral care.

Now then how does this apply with regard to some of the problems that the parish priest may meet in dealing with lay societies?

First, we make the application with regard to the establishment of societies. With due allowance made for a few exceptions, the works of piety and charity as well as any other act of public devotion should center around the parish. Societies should operate or function in conjunction with the parish or as parish societies. Even though the scope of the society may transcend the limits of the parish, still the society must have a parochial aspect. It must be remembered that the emphasis rests with the parish as the center of all activities of the lay society. In view of all this it seems practical and promising for the parish priest to urge or to begin the foundation of parish societies.

The right to found or establish societies is a natural right given to man by the law of nature. Since this is a natural right, it cannot be denied man as long as the end for which he joins the others is good. Therefore any person of 21 years or older has the natural right to found a society, unless such a society is expressly

forbidden, or the purpose of the society is evil, or the society infringes on the rights of others. Otherwise a society can be founded, and no approval is necessary. This is the case with lay societies. However, ecclesiastical societies, since of their very nature they need ecclesiastical approval, can be founded only by ecclesiastical authority. Since these things are so, the priest himself has the right to found lay societies for religious purposes in accord with the general and particular legislation of the Church.

Whether or not in a given instance the parish priest should urge or actually begin the foundation of a lay society will depend entirely upon his own personal grasp of the problems and needs of his parish, and on his own judgment with regard to the adequacy of already existing organizations. If he sincerely feels in his conscience that his people are getting all that they can or should from his care, then of course he would be foolish to found new societies. Multiplication of societies can easily lead to a dissipation of energy. Before founding new societies, he should first try to rejuvenate or redirect already existing societies. If in this he fails, let him first examine the causes of the failure and act accordingly. If the failure was caused by too little active interest on his part or on the part of the people, it will do little good to start another organization, doomed from the beginning by the same lack of interest. If the failure was caused by abuses, they can probably be corrected without a dismantling of the whole society. But if the failure was caused by the inadequacy of the society to meet a given situation, then he could start another.

With regard to the constitutions of a society he will as usual act as the pastor, seeing that all is done in accord with the teachings and laws of the Church. He should see that the constitutions point to a certain stability of organization and purpose. He should be on guard that nothing of levity or unbecoming novelty creep into the laws of the society. He should watch carefully that the statutes are in accord with the laws of the Church; that they do not infringe on the rights of anyone; and that adequate provision is made for ecclesiastical supervision. He should see that proper provision is taken for meetings, so that set purposes are more easily and certainly attained. He should see to it that nothing unbecoming enters into meetings, such as excessive drinking, or that the meetings become merely social affairs. He should take care for the election of such persons as answer a need and prove to be of help.

With regard to membership in the societies, he will see to it that membership is open to all who can and will certainly benefit from the purposes of the society. It is the spirit of the Church's law that a person should, if possible, be linked with some society in his own parish, and thus partake of the activities of the parish. Conditions of membership can of course be set down by the statutes of the society, but care must be taken that these be not so multiplied that the very purpose of the society is defeated, or that otherwise worthy persons are excluded from membership and thus from true religious development. However, completely unworthy persons are to be excluded, as well as those who have no true intention of striving towards the ends of the society or of helping others to attain those ends. In cases such as these the parish priest is most often the most competent to judge the worthiness or the intentions of the candidates, since it is his duty as their spiritual father to know them. He must always be on guard lest a member occasion scandal or become a danger of perversion to the others. And since membership in a society implies a certain quasi-contract between the member and the society, he must see to it that the members realize this and live accordingly. He should see to it that nothing cruel, inane or contrary to faith or morals enter into the so-called initiation rites. He should see to it that all the privileges of membership are extended to all the members, unless they be reasonably barred from participating in such privileges.

What should be the parish priest's relationship to these societies with regard to their temporal goods? By canon 691 associations erected as moral persons, i.e. ecclesiastical societies, have the right to possess goods. But this canon supplements the natural law, since by the natural law all societies have the right to possess goods as long as the ends of such societies are honest and good in themselves. Thus ecclesiastical societies have the natural right to possess goods plus the juridic right in virtue of which their goods become in a certain sense ecclesiastical goods. Lay societies possess goods in virtue of a natural right. But since there is no moral person here as far as Canon Law is concerned, there is no one to hold title to the goods. Such right to the title is therefore established in the name of the society in some natural person, who holds the title in trusteeship for the society.

With regard to the administration of the temporal goods the parish priest must remember that lay societies are exempt from all

ecclesiastical supervision, unless such supervision is provided for in the statutes. The money or property of a lay society constitutes a private fund, and therefore in no way belongs to the church, the pastor, or to the parish, and cannot be appropriated without the society's consent. This very point has often been the sorest point between pastors and parishioners, and has often caused shameful bitterness and fights. But it is absolutely essential to justice and charity that the parish priest realize this point and forestall any possible misunderstanding that could possibly develop by seeing that adequate provisions are made in the statutes for the proper administration of all temporal goods. In many dioceses the making of such provision is commanded by the diocesean synodal legislation. The parish priest must exercise the greatest care and prudence in this matter, for it does him absolutely no good to establish a wonderful society and then to quarrel or wrangle over what is to be done with the property or the money. That should have been settled when the constitutions were being drawn up. However, should the administration of the temporal goods infringe on the rights of the pastor, then he can and should intervene. But this too breeds bitterness, since his people will begin to feel that he is making up the rules as the game progresses. Let the pastor agree on the rules before the game begins.

Finally, what should be the relation of the parish priest to the suppression of societies? Here we must distinguish between a penal suppression that follows upon an act that has partaken of the nature of a crime, and an administrative suppression which follows in consequence of an existing conflict or usurpation of rights.

Since the inflicting of penalties is an act of jurisdiction which the pastor cannot exercise in the external forum, the penal suppression of societies is reserved to the Ordinary. However, to say that the parish priest has no right whatsoever to suppress lay societies is to deny the fulness of his parochial powers. Even though he cannot proceed in a penal or judicial manner, his very office gives him ordinary power of jurisdiction to govern his subjects. Therefore, in so far as he is not restricted by law, the pastor can command and demand obedience in those things which are within his rights, as well as in those things which concern the ministry and running or administering of the parish. From this we deduce

his right to suppress lay societies, provided there be present a just and a proportionate cause.

The cause of suppression must be based on a conflict of rights. Such, for example, would be the society's infringement on the rights of the pastor. Here let the pastor beware, for he must realize what his rights are, and not take unto himself rights which in no way are exclusively his. For example, not every parochially instituted work of charity or piety infringes on the rights of the pastor. On the contrary, he is bound to foster such a work. Nevertheless, if he feels that the work can be better done his own way by another society, he can order a society suppressed. However, an act of suppression may in some cases be a violent measure and cause a lot of harm. With some tact and patience a pastor can often discourage and disband an unneeded an unwanted society by more negative means and softer measures, so that the desired result may be achieved without any accompaniment of bitterness.

In summary, then, these points may be offered:

1. Societies both ecclesiastical and lay are completely in accord with the spirit and the teaching the Church.

2. Societies if rightly used greatly aid the parish priest in the discharge of his pastoral duties.

3. In order to make the greatest use of these societies the parish priest should maintain good relationships with them—relationships based on the correct understanding of their rights and duties as well as of his own rights and duties.

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## TAX-EXEMPTION FOR RECTORIES *

The most satisfactory procedure to establish tax-exemption for the rectory is, of course, by having it specifically mentioned in the tax exemption statute. As of this date some twenty six states specifically exempt rectories and parsonages from taxation, either com-

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pletely, or with a limitation on the assessed valuation which may be thus tax-exempt. These states are the following:

Colorado, Connecticut, Florida, Idaho, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Nevada, New Jersey, New York, North Carolina, North Dakota, Rhode Island, South Carolina, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming. (See attached Appendix for constitutional and statutory citations.)

In those states where rectories and parsonages are not specifically mentioned in the exemption statute the law differs. It is said in 51 *American Jurisprudence* 594, Section 618, Taxation—Parsonages or Residences of Ministers or Priests:

" Where there is no such express exemption, the weight of authority supports the rule that parsonages, residences of ministers, and parish houses owned by a church society or corporation, and occupied as a residence by the pastor, rector, or priest of a church, are not included within the more general exemption from taxation of property used for religious purposes . . . . Under a statute exempting from taxation ' all . . . grounds and buildings of . . . religious institutions and societies devoted solely to the appropriate objects of these institutions . . . and not leased or otherwise used with a view to pecuniary profit ' it has been held that a building owned by a church corporation and occupied solely as a parsonage, or as the residence of the rector of the church without payment to the corporation, is exempt from taxation."

It will be noted from *American Jurisprudence* that the form of statutory language may be of weight. Where the statute excepts property under some form of words such as " used for religious purposes ", the hope for obtaining exemption for the rectory may not be so bright, as where it refers to property of " religious institutions " without limitation as to the uses to which such property is put.

### Favorable Decisions

Perhaps the most recent case on the subject decided by a court of last resort, and incidentally one very favorable to the cause of exemption is that of *Petition of Board of Foreign Missions,* 22 N.W. 2d 642 (Minnesota 1946). This case is particularly noteworthy because it indicates a change in the holding of the Supreme Court of Minnesota based on an alteration in the wording of the exemption

statute. During the period when the statute in its older form exempted "church property used for religious purposes" rectories were held taxable, on the theory that their primary purpose was residential rather than religious. When the statute was amended to exempt simply "church property and houses of worship," the State Supreme Court held that rectories were included within the exemption.

Pertinent extracts from the Board of Foreign Missions decision are set forth as follows:

"The fundamental issue is whether a residential property owned by a subsidiary corporation organized under the auspices and operated subject to the control of an established general church organization or sect for the sole purpose of conducting missionary and educational work in foreign lands for the propagation of its religious faith, which property is furnished rent free to, and occupied by such subsidiary corporation's administrative or executive director, is immune from taxation under Minn. Const. Art. 9, Sec. 1, which provides: '. . . all public burying grounds, public school houses, public hospitals, academies, colleges, universities and all seminaries of learning, *all churches, church property and houses of worship,* institutions of purely public charity, and public property used exclusively for any public purpose, shall be exempt from taxation . . . .' [Italics supplied]."

"The wording of the foregoing constitution provision dates from the adoption of the 1906 amendment. Prior to such amendment, the words above italicized read as follows: '*all churches, church property used for religious purposes* and houses of worship', Article 9, Section 3, the words 'used for religious purposes' (which we have italicized) having been eliminated by the 1906 amendment."

"This court prior to the 1906 amendment, had held that the constitutional exemption from taxation accorded to a church building or place of worship, could not be extended to include a parsonage, in that the primary use of the latter as a residence is secular and not religious. In eliminating the words 'used for religious purposes' the intent undoubtedly was to extend the benefits of tax exemption to a larger classification of church property."

"*Ramsey County v. Macalester College,* 51 Minn. 437, 53 N.W. 704, 18 L.R.A. 278, dwelling houses owned by the college and furnished rent free to its professors were held exempt from taxation in

that they were reasonably necessary and appropriate for the proper occupancy and enjoyment of the college . . . . "

" . . . the foregoing rule was extended under the 1906 amendment to church parsonages in *State v. Church of the Incarnation,* 158 Minn. 48, 196 N.W. 802 and *State v. Union Congregational Church,* 173 Minn. 40, 216 N.W. 326.

" . . . In the instant case, it is immaterial whether the residence occupied by defendant's executive director be considered a parsonage or not . . . . The constitutional exemption in the interest of the public welfare was granted, not to a church building or parsonage, but the church as a living institution for the advancement of religion as a way of life for all men . . . . Obviously, the benefit of tax exemption was granted to the church as an institution and as a whole and not merely to its subordinate units. Here we are dealing with a residential property owned and furnished rent free to a church official performing an important executive function in directing the missionary work and policies of the entire church . . . . We hold that the furnishing of a rent free residence to a church executive whose guiding hand coordinates and directs the missionary activities of an entire church is reasonably related to the accomplishment of church purposes and in so doing we find no basis for the expressed fear that all limitations upon tax exemption will thereby be destroyed . . . . "

It might be of interest further that the exemption in this case was extended a step further than rectory property strictly, so as to cover a residence furnished an executive official of the church. Likewise the Minnesota Court takes a very broad view of the exemption provision, as covering the " church as an institution ".

In 1935 the Supreme Court of New Mexico held taxable a dwelling house owned by a church but rented out for revenue raising purposes. *Church of Holy Faith v. State Tax Commission,* 48 P. 2d 777. The New Mexico statute exempted from taxation " all church property . . . not used or held for private or corporate profit." While holding that this did not extend to a house rented out for the raising of revenue, the Court did say by way of dictum:

" Our construction would logically lead to a holding that buildings with land they occupy and furnishings therein, used for religious purposes, or for residences of the priests or ministers, together with adjacent land reasonably necessary for convenient use of such buildings are exempt from taxation."

The Supreme Court of West Virginia in *State v. Kettel,* 105 S.E. 775 (1921), held that under a state constitutional provision authorizing legislation exempting from taxation "property . . . used for . . . religious . . . purposes" the legislature was acting within its authority in enacting a statute specifically exempting rectories from taxation. The Court did not discuss the functions of rectories or parsonages, but devoted most of its opinion to considering the power of a legislature to construe provisions of the state constitution.

Even so the Kettel case is of interest because it extended exemption to rectories under a "religious purpose" type of provision. The same applies on the strictly statutory level to the case of *State v. Erickson,* 44 South Dakota 63, 182 N.W. 315, 13 A.L.R. 1189 (1921). This case is rather unusual in that the Supreme Court of South Dakota adopted for its own reasoning the view of three dissenting justices of the Supreme Court of Illinois, which under a statute similar to that of South Dakota had reached the conclusion that rectories were taxable. (The Illinois case was that of *First Congregational Church v. Board of Review,* 254 Ill. 220, 98 N.E. 275, 39 L.R.A.(NS) 437, 1912). That portion of the Illinois dissent adopted by the South Dakota Court was as follows:

"The purpose of building church houses is to promote the cause of religion, and this requires the services of a pastor or minister. As he is usually a man who devotes all his time to the work of the church and has no income except such as is paid by his congregation, it is customary to provide a place for him to live . . . wherever the building in which the pastor is to live is located, it is a part of the plan of the congregation to benefit mankind by preaching and teaching religion. The idea before the mind in furnishing the pastor a house is to make efficient the religious work and purposes of the church."

On the basis of the above the Supreme Court held that rectories were exempt from taxation under a statute exempting "all property belonging to any . . . religious society and used exclusively for . . . religious purposes . . . ."

Particular attention is called to the broad view of the Court in holding that by furnishing the pastor with a rent-free residence the Church makes more efficient its religious work and purposes. That is, the furnishing of the rectory is viewed as being an element in the Church's program of preaching and teaching.

In 1887 the Supreme Court of Missouri held rectories tax-free on the basis of being of a *charitable* nature. *Bishop's Residence v. Hudson,* 91 Mo. 671, 4 S.W. 435. The constitution of Missouri of that date authorized the exemption from taxation of property " used exclusively for religious worship, for schools, or for purposes purely charitable . . . . " The decision said:

" In sections 119 and 122 Bish. Eq. in speaking of what are charities, it is said: ' Gifts for . . . repairing a parsonage . . . are good charities.' In Section 1164, Story Eq. it is said: ' Money given to maintain a preaching minister is a charity ' . . . . So in section 701, Perry, Trusts, it is said: ' Gifts for the benefit of ministers of the gospel are charities '.

" Gifts for repairing parsonage houses, for maintaining ministers of the gospel, have been held to be charities in the following cases: *Sohier v. St. Paul's Church,* 12 Metc. 250; *Attorney General v. Bishop of Chester,* 1 Brown Ch. 444; *Cory Universalist Society v. Beatty,* 28 N.J. Eq. 570; *Price v. Maxwell,* 28 Pa. St. 35 . . . . "

" If a gift for repairing a parsonage, as is held in the authorities herein cited, is a charity, it follows that a gift for erecting and maintaining one for the benefit of an indefinite number of preachers of the gospel, as in this case . . . is no less a charity . . . ".

### Unfavorable Decisions

In the A.L.R. annotation to *State v. Erickson, supra* (13 A.L.R. 1189, 1921), it is said:

" Although, as subsequently shown, there is some conflict, the decided weight of authority supports the rule that parsonages, residences of ministers, and parish houses owned by a church society or corporation, and occupied as a residence by the pastor, rector or priest of a church, are not included within the more general exemptions from taxation of houses, etc., used for religious purposes ".

In support of this statement, cases are cited from the following states: Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Minnesota, Missouri, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, and Texas.

On a numerical count of cases this would seem to justify the expression " decided weight of authority ". On an examination of the cases cited, however, one finds that several of them are not as persuasive as might appear. Likewise, in some of the states in-

volved the question has been removed from further judicial action by legislation specifically exempting parsonages and rectories.

The Georgia case, *St. Mark's Church v. Brunswick,* 78 Ga. 541, 3 S.E. 561 (1887) held that a parsonage was not tax-exempt under a statute exempting " places of religious worship ".

The Illinois case of *People ex rel. Thompson v. First Congregational Church,* 232 Ill. 158, 83 N.E. 536 (1907) cited in the A.L.R. annotation involved an action to challenge the validity of a statute specifically exempting parsonages from taxation. The state constitution authorized exemption of " property . . . used exclusively for . . . religious . . . purposes . . . ". The court held that the statute was unconstitutional in that a parsonage did not serve a " religious purpose ", and that the legislature " cannot by its enactment make that a religious purpose which is in fact not a religious purpose ". It will be noted that the Illinois Supreme Court, in this decision, reached a conclusion opposite from that reached some years later by the Supreme Court of West Virginia in the Kettel case.

Another Illinois case cited is *First Congregational Church v. Board of Review, supra,* which has already been noted in connection with the South Dakota case, *Petition of Board of Foreign Missions, supra.* Statutory attempts to secure exemption for parsonages having failed, it appeared that an attempt was made in the *First Congregational Church* case to attain this end by showing that a parsonage was used for transaction of much church business in addition to being the residence of the pastor. This contention was rejected, it being in the majority opinion that:

" The primary use of a parsonage is as a home for the pastor and his family; that is, that such use is its principal and general use, and that the fact that some parts of the parsonage are used for purposes connected with the pastor's work, or the work of the church, would not make it a building used exclusively for religious purposes and exempt from taxation ".

In the Indiana case of *Trustees of the Methodist Church v. Ellis et al.,* 38 Ind. 3 (1871) exemption was denied under a statute exempting " every building erected for religious worship ". The Court said, " We are unable to see how we can, by construction, extend the statute so as to embrace parsonages . . . ".

Indiana now has a statute specifically exempting parsonages from taxation.

Two Kansas decisions are cited. An early case, *Vail v. Beach,* 10 Kansas 214 (1872) denied tax-exemption to parsonages under a constitutional provision exempting property " used exclusively for religious . . . purposes ".

This constitutional language remains unchanged, but the Legislature adopted a statute thereunder specifically exempting parsonages. This statute was involved in the later case of *Griswold v. Quinn,* 97 Kan. 611, 156 P. 761 (1916). That case involved an attempt to extend the parsonage exemption to the residence occupied by a bishop, which was rejected. The Kansas Supreme Court held that the exemption was specifically for the residence of a pastor of a church, and should not be extended to a dwelling occupied by any church dignitary other than the pastor. (Note: No question was raised in the *Griswold* case as to the validity under the state constitution of the statute exempting rectories. Likewise some subsequent amendments of the Kansas statute appear to have removed the restrictive language which made it applicable only to the resident pastor of an individual church.)

The Kentucky case cited, *Broadway Christian Church v. Commonwealth,* 112 Ky. 448, 66 S.W. 32 (1902) is not really applicable as it concerned a dwelling house formerly used as a parsonage but at the time of the action rented out for revenue purposes, rather than a parsonage. The Court made reference to the fact that Kentucky had a statute exempting parsonages from taxation.

Early Louisiana cases cited deny exemption to rectories. *First Presbyterian Church v. New Orleans,* 30 La. Ann. 259 (1878); *State ex rel. Cunningham v. Board of Assessors,* 52 La. Ann. 223, 26 So. 872 (1899). Exemption was denied under a statute exempting " churches, chapels, convents and other public buildings for religious worship . . . ". Louisiana now has a statute specifically exempting parsonages.

Two Massachusetts cases cited deny exemption to parsonages. *Third Congregational Society v. Springfield,* 147 Mass. 396, 18 N.E. 68 (1888) and *First Universalist Society v. Bradford,* 185 Mass. 310, 70 N.E. 204 (1904). The Massachusetts statute then exempted " houses of religious worship ". The statute of that state has since been amended so as to specifically exempt parsonages.

The Minnesota cases cited are prior in point of time to *Petition of Board of Foreign Missions, supra,* and their holdings in respect

to the taxable status of rectories are now superseded by the latter case, decided under the new form of the constitutional exemption.

The Missouri case cited, *Bishop's Residence v. Hudson, supra,* has been already discussed. It certainly does not support the tenor of the editorial opinion in that it held rectories tax-exempt on the theory of being charities.

In New Jersey rectories are now tax-exempt by virtue of specific mention in the exemption statute. A number of earlier cases are cited as denying exemption; *State etc. v. Lyon,* 32 N.J. Law 360 (1867); *State v. Krollman,* 38 N.J. Law 323 (1876); *State v. Axtell,* 41 N.J. Law 117 (1879). The New Jersey statute at the time of these cases exempted "buildings erected and used for religious worship".

The New York cases cited, *People v. Feitner,* 168 N.Y. 494, 61 N.E. 762 (1901) and others, do not deny the tax-exempt status of rectories. New York at the time had a statute specifically exempting rectories from taxation except on that portion of their valuation, if any, in excess of $2,000. The case cited held that a rectory could not be exempted on any valuation in excess of this amount. Since that case the maximum tax exempt valuation has been increased to $3,000.

In Ohio the cases of *Gerke v. Purcell,* 25 Ohio State 229 (1874) and *Watterson v. Halliday,* 77 Ohio St. 150, 82 N.E. 962 (1907), subject rectories to taxation under a statute exempting "houses used exclusively for public worship", notwithstanding that the Court conceded that the rectory was "used by the priests and bishops for the discharge of many duties of a religious and charitable nature".

The Pennsylvania cases cited, *Re Parsonage Taxes,* 25 Pa. Co. Ct. 570 (1901); *Philadelphia v. St. Elizabeth's Church,* 45 Pa. Super. Ct. 363 (1911) and some earlier cases, hold rectories to be not exempt under a statute exempting "all churches . . . with the ground annexed and necessary for the enjoyment of the same".

The Rhode Island case cited, *St. Joseph's Church v. Assessors,* 12 R.I. 19, 34 St. Rep. 597 (1878) held that rectories were not tax-exempt under a statute exempting "buildings for religious worship". Rhode Island now has a statute specifically exempting rectories.

The Texas case cited, *Trinity M.E. Church v. San Antonio,* 201 S.W. 669 (1908) held that rectories were taxable under a statute

exempting "actual places of religious worship". Texas now has a statute specifically exempting rectories.

In the annotation to a later case treated in A.L.R., *Mordecai F. Ham Evangelical Association v. Matthews*, 300 Ky. 402, 189 S.W. 2d 524, 168 A.L.R. 1216, which deals with another phase of tax-exemption, there is mention at page 1247 of additional cases on tax status of rectories and parsonages.

A Massachusetts case, *William T. Stead Memorial Center v. Town of Wareham*, 299 Mass. 235, 12 N.E. 2d 725 (1938), is noted as reaffirming the doctrine of the previously cited Massachusetts cases in regard to the tax status of rectories, and under the same statute. Subsequent to this case the Massachusetts exemption statute was amended so as to specifically exempt rectories.

A later New York case, *Mordecai v. New York*, 238 N.Y.S. 525 (1929), is noted, but this appears not to be in point. It will be recalled that New York has a statute exempting rectories except for that portion of the assessed valuation in excess of $3,000. In denying exemption in the *Mordecai* case, it was said that: "the claimant had not pursued the proper remedy in that the legislature had repeatedly provided for an exemption of dwellings used by officiating clergymen of religious bodies".

The 168 A.L.R. annotation cites two later Illinois cases holding to the previously announced Illinois doctrine on rectories. *St. John Evangelical Lutheran Congregation v. Board of Review*, 357 Ill. 69, 191 N.E. 282 (1934) and *People ex rel. v. Pearsall*, 315 Ill. 233, 146 N.E. 165 (1925).

(This A.L.R. annotation cites also the later Minnesota cases discussed hereinbefore which reverse the earlier doctrine in that state denying exemption to rectories.)

*Analysis of "Unfavorable Cases"*

A swift review of the so-called "unfavorable cases" listed in the A.L.R. annotation might be of assistance.

It is found, first of all, that the listed cases from three states are not in point; the Kentucky case, because it involved a dwelling house, rented out for revenue rather than used for residence of the minister; the Missouri case, because it actually held for exemption, although on a different theory; and the New York cases because these cases involve construction of a statute specifically exempting rectories.

In eight of the states listed as having unfavorable decisions, statutes have been subsequently enacted providing for the specific exemption of rectories, to-wit in Indiana, Kansas, Louisiana, Massachusetts, New Jersey, Rhode Island and Texas. The Minnesota situation is unique, but that state might be placed in this category.

Therefore it appears that these unfavorable decisions remain the law in only four states, to-wit, Georgia, Illinois, Ohio and Pennsylvania.

It might be mentioned that local practice probably permits the exemption of rectories in some states where the statute omits specific mention thereof, and where the question has not been litigated.

*No case denied exemption where statute does not limit use of property to religious use, religious purposes, or religious worship.*

An examination of the cases denying exemption to rectories reveals that in every such case the denial was under an exemption statute which restricted the exemption to houses of religious worship, or to property used for religious purposes, or employed some similar restrictive language.

Attention is called once more to the *Petition of the Board of Foreign Missions* case from Minnesota, where the tax-exemption policy in respect to rectories was judicially changed following amendment of the exemption statute to omit the requirement that the property must be " used for religious purposes ".

The same view was taken by the New Mexico Supreme Court in its dictum in the *Church of the Holy Faith* case.

*Some cases allow exemption on ground of religious use.* While it cannot be denied that the majority of the decided cases refuse to accept religious use as a test for granting exemption to rectories and parsonages, that test has been accepted in some decisions.

The Erickson case from South Dakota is the leading decision here. Attention is called to the broad view adopted holding that a rectory is a part of " the plan of the congregation to benefit mankind by preaching and teaching religion."

The Kettel case from West Virginia adopts this theory, although, as before indicated, the discussion on this point is not illuminating.

While the Minnesota court in the *Petition of the Board of Foreign Missions* exempted rectories on the basis of broad constitutional language, it is of interest that the decision contained a statement

that: " The constitutional exemption in the interest of public welfare was granted, not to a church building or parsonage, but to the church as a living institution for the advancement of religion as a way of life . . . . We hold that the furnishing of a rent free residence to a church executive . . . is reasonably related to the accomplishment of church purposes . . . ".

While on this phase of the matter attention might be called to the recent case of *Board of Assessors of Town of Framingham v. First Parish in Framingham,* 107 N.E. 2d 309 (Massachusetts, 1952). This case held a *parish house* to be tax-exempt. The present Massachusetts statute (which specifically exempts " parsonages ") exempts " houses of religious worship ", with a qualification that " such exemption shall not except as herein provided, extend to any portion of any such house of religious worship appropriated for purposes other than religious worship or instruction."

The question was whether the exemption should be extended to a building separate from the church and used as a parish house. The Court said in part:

" The parish building, although physically separate from the church, is maintained as a place for activities which normally accompany and supplement the religious work of a parish and which frequently are housed in the vestry of the parish church . . . . The Sunday school is devoted to religious instruction. The Women's Alliance and the Men's Club are subsidiary organizations common to religious societies of all denominations, ordinarily established to promote and aid religious objectives. It is clear that the board was warranted in finding that the portion of the real estate used by them is ' appropriated for religious worship and instruction in conjunction with the adjacent church '. The occasional use of the rooms by various secular organizations which does not appear to have interfered with their regular use for religious purposes does not, we think, constitute an appropriation for other purposes . . . ".

## Appendix A

### Citations of state constitutional and statutory provision specifically exempting parsonages and rectories

Colorado, Section 24, Chapter 142, Colorado Statutes Annotated
Connecticut, Section 1761, General Statutes of Connecticut, 1949
Florida, Section 192.06, Florida Statutes

Idaho, Section 63-105, Idaho Code
Indiana, Section 64.201, Burns Indiana Statutes
Kansas, Section 79.201, General Statutes of Kansas
Kentucky, Section 170, State Constitution of 1891
Louisiana, Section 4, Article X, State Constitution of 1921
Maine, Section 6, Chapter 81, Revised Statutes of Maine, 1944
Maryland, Section 8, Chapter 81, Annotated Code of Maryland
Massachusetts, Section 5, Chapter 59, Annotated Laws of Massachusetts, 1945
Michigan, Section 7.7, Michigan Statutes Annotated
Nevada, Section 6418, Nevada Compiled Laws, 1945 Supplement
New Jersey, Section 54:4-3.6, New Jersey Statutes Annotated
New York, Tax Law, Section 4
North Carolina, Section 105-296, General Statutes of North Carolina
North Dakota, Section 57-0208, North Dakota Code, 1943
Rhode Island, Section 2, Chapter 58, General Laws of Rhode Island, 1923, as amended by Ch. 1855, Public Laws 1947-8
South Carolina, Article X, Section 4, State Constitution, 1895
Texas, Article 7150, Vernon's Civil Statutes of Texas
Vermont, Section 649, Vermont Statutes, 1947
Virginia, Section 183, State Constitution of 1928
Washington, Section 11,111, Remington's Revised Statutes of Washington
West Virginia, Section 678, West Virginia Code of 1949
Wisconsin, Section 70.11, Laws of Wisconsin, 1947
Wyoming, Section 32-102, Wyoming Compiled Statutes, 1945

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## REQUIREMENTS FOR THE ERECTING OF THE STATIONS

Since in recent times the Sacred Apostolic Penitentiary has done much to simplify the requirements for the erection of the Way of the Cross through its abrogation of the older regulations, how is one to explain the retained mention in the Roman Ritual of the regulations made by the Sacred Congregation of Indulgences on May 10, 1742, with reference to the document drawn up in attestation of the completed act whereby the Stations were erected?

CONQUASSATUS

Can. 239, § 1, 6°. Praeter alia privilegia quae in hoc Codice suis in titulis enumerantur, Cardinales omnes a sua promotione in Consistorio facultate gaudent sub unica benedictione erigendi, in ecclesiis et oratoriis etiem privatis aliisque piis locis, stationes *Via Crucis* cum omnibus indulgentiis, quae huiusmodi pius exercitium peragentibus impertitae sunt; . . .

Can. 349, § 1, 1°. Ab accepta authenthica notitia peractae canonicae provisionis, Episcopi sive residentiales sive titulares, praeter alia privilegia quae suis in titulis recensentur, fruuntur privilegiis de quibus in can. 239, § 1, . . . nn. 5, 6, ritibus tamen ab Ecclesia praescriptis.

Can. 66, § 1. Facultates habituales quae conceduntur vel in perpetuum vel ad praefinitum tempus aut certum numerum casuum, accensentur privilegiis praeter ius.

§ 2. Nisi in earum concessione electa fuerit industria personae aut aliud expresse cautum sit, facultates habituales, Episcopo aliisve de quibus in can. 198, § 1, ab Apostolica Sede concessae, non evanescunt, resoluto iure Ordinarii cui concessae sunt, etiamsi ipse eas exsequi coeperit, sed transeunt ad Ordinarios qui ipsi in regimine succedunt; item concessae Episcopo competunt quoque Vicario Generali.

Can. 368, § 1. Vicario Generali, vi officii, ea competit in universa dioecesi iurisdictio in spiritualibus ac temporalibus, quae ad Episcopum iure ordinario pertinet, exceptis iis quae Episcopus sibi reservaverit, vel ex iure requirant speciale Episcopi mandatum.

Can. 913, 1°. Inferiores Romano Pontifici nequeunt facultatem concedendi indulgentias aliis committere, nisi id eis a Sede Apostolica expresse fuerit indultum; . . .

S. Paenit. Ap., Dubium circa potestatem adnectendi indulgentias rosariis, coronis precatoriis, etc., die 18 iul. 1919: "An liceat Episcopis communicare presbyteris suae ditionis habitualiter potestatem benedicendi rosaria, etc., de qua in cannot 349, § 1, 1°, cum applicatione indulgentiarum, observatis ritibus ab Ecclesia praescriptis."

"Sacra Paenitentiaria Apostolica, re mature considerata, respondendum censuit: *Negative.*"—*Acta Apostolicae Sedis*, XI (1919), 332.

S. Paenit. Ap., Dubia circa potestatem Episcoporum quasdam facultates communicandi, die 10 nov. 1926: "1. Licetne Episcopis communicare, saltem per modum actus, Sacerdotibus suae ditionis facultates, de quibus in can. 349, § 1, n. 1, Codicis iuris canonici? 2. Eaedem facultates competuntne etiam Vicario Generali?"

"Et eadem Sacra Paenitentiaria, re mature perpensa, respondendum censuit: Ad utrumque *Negative.*"—*AAS*, XVIII (1926), 500.

S. Paenit. Ap., Decretum de facultatibus indulgentias piis operibus aut devotionis obiectis adnectendi deque analogis quibusdam indultis, tantum directe a Sacra Penitentiaria in posterum concedendis die 20 mart. 1933: "Quod vero ad privilegia attinet quibusdam Ordinibus vel Congregationibus religiosis concessa . . . stationes *Viae Crucis* erigendi, haec ipsis manent, ea tamen lege ut in posterum membra eorumdem Ordinum vel Congregationum uti eisdem valeant tantum personaliter, non autem ita ut ea concedere quoque possint aliis sacerdotibus ad eosdem Ordines vel Congregationes non pertin-

entibus: hi enim omnes facultates, usui talium privilegiorum necessariis, tantummodo a Sacra Paenitentiaria, modo superius indicato, obtinere poterunt."—*AAS*, XXV (1933), 171.

S. Paenit. Ap., Decretum: Conditiones ad validam sacrarum "*Viae Crucis*" stationum erectionem ex novo statuuntur, die 12 mart. 1938: "... abrogatis singulis conditionibus hactenus vigentibus, benigne [Sanctitas Sua] decernere dignatus est ad validam stationum "*Viae Crucis*" erectionem sufficere ut sacerdos, idcirco rogatus, debita facultate sit praeditus, iuxta Decretum *Consilium suum persequens*, datum die 12 [20] Martii, 1933; prorsus tamen decere, ratione praesertim ecclesiasticae disciplinae, ut singulis vicibus, nisi agatur de locis exemptis, accedat venia Ordinarii loci, ubi facultas exercetur, saltem rationabiliter praesumpta, quando Ordinarius facile adiri nequeat. Praeterea eadem Sanctitas Sua statuit ut omnes "*Viae Crucis*" erectiones, quacumque ex causa hucusque invalide peractae, huius Decreti vigore sanatae maneant."—*AAS*, XXX (1938), 111-112.

Formula Maior, n. 41 (pro Vicariis et Praefectis Apostolicis episcopali dignitate auctis): "Subdelegandi suis missionariis facultatem erigendi, ritibus ab Ecclesia praescriptis, stationes *Viae Crucis* cum omnibus indulgentiis, quae huiusmodi pium exercitium peragentibus a Summis Pontificibus impertitae sunt; ..."—J. de Reeper, *A Missionary Companion*, A commentary on the Apostolic Faculties (Westminster, Maryland: The Newman Press, 1952), pp. 141 and 179.

Formula Minor, n. 40 (pro Vicariis at Praefectis Apostolicis episcopali dignitate non auctis): "Erigendi, ritibus ab Ecclesia praescriptis, stationes Crucis..." (Subdelegari potest)—J. de Reeper, *A Missionary Companion*, p. 182.

*Rituale Romanum*, Ritus erigendi stationes *Viae Crucis*, *in fine*, Formula ad fidem faciendam de erectione *Viae Crucis*: "Vigore facultatis mihi commissae, ego N. N. *Viam Crucis* cum adnexis Indulgentiis erexi in loco ut supra in precibus, iuxta regulas a S. Indulgentiarum Congregatione die 10 maii, 1742, praescriptas. In quorum fidem testimonium hoc manu mea exaravi hac die, etc., . . . N.N."

The canons and the other excerpts here listed indicate the development up to the present. If a special faculty is necessary for the erecting of the Stations, that is so because of the indulgences attached thereto. The power conferred in canon 349 on bishops is not an ordinary power of their office, but rather a special privilege bestowed as a mark of honor on one who has received episcopal consecration. Although it may appear as a delicate distinction to contrast ordinary powers of office with powers which *de iure* are associated as privileges with an office, still the *nisi* clauses in canons 199, § 1, and 66, § 2, leave open the way for excluding the passing on of power whether enjoyed as an ordinary power or as a conceded

faculty. Such a restriction is expressly called into force and application through the settlement which the Sacred Penitentiary brought with reference to certain submitted doubts.

The same line of reasoning may be employed with regard to the vicar general. Canon 368 equates his jurisdiction with that of the bishop, with allowance made of course for the very exceptions there indicated. Canon 349 deals with privileges, and not with jurisdictional powers. Accordingly one can rightfully expect a possible divergency in the twofold application in question. And if canon 66, § 2, lets the vicar general share in the bishop's habitual faculties, though one consider them to be possessed as privileges, still the accompanying *nisi* clause in this canon serves as the very basis for a different application when there is question of the privileges listed in canon 349. That, too, has been made plain by the Sacred Penitentiary on November 10, 1926, when it denied competence to the vicar general in this matter.

The requirement that after the erecting of the Stations a document be drawn up regarding the completed act "*iuxta regulas a S. Indulgentiarum Congregatione die 10 maii, 1742, praescriptas*" must be understood, so it seems, not in relation to a set formulary as then prescribed, but with reference to the correct ritual in the procedure of the blessing in the act of erecting the Stations. The writer failed to find this document (May 10, 1742) reported in Prinzivalli's *Decreta Authentica Sacrae Congregationis Indulgentiis Sacrisque Reliquiis Praepositae* (Romae, 1862), and likewise did not find any mention of it in J. B. Falise's *Sacrae Congregationis Indulgentiarum Resolutiones Authenticae* (Lovanii, 1862). The *Codicis Iuris Canonici Fontes* likewise leave it unmentioned and unreported. Perhaps one may feel warranted in concluding that the ruling given on May 10, 1742, was concerned not with the form of recording, but with the ritual to be followed.

In support of this suggestion one can point out that Beringer, in his *Die Ablässe, ihr Wesen und Gebrauch* (11. ed., Paderborn, 1895), set down three different formularies for as many different situations, but unvaryingly incorporated the phrase, "*iuxta regulas a S. Indulgentiarum Congregatione die 10 maii, 1742, praescriptas.*" He contemplated the cases in which a delegated Franciscan priest, a delegated non-Franciscan priest, and the local pastor in the absence of a Franciscan priest were authorized to undertake the erecting of the

Stations. In the record to be made, each of these duly emphasized the particular status in which he functioned, but uniformly each one testified that he had accomplished his task "*iuxta regulas etc.*"

If the phrase be taken in the sense of pointing to the requisite ritual form of blessing, then indeed, since the form now contained in the Roman Ritual harmonizes with the earlier form (May 10, 1742), one can readily understand why the reference back to May 10, 1742, is not an anachronism. It simply calls for the record's substantiation of the fact that the correct ritual was followed in the priest's act of blessing the crosses of the Stations.

*The Pastoral Companion* (10. ed., Chicago: The Franciscan Herald Press, 1947) of the late Father Honoratus Bonzelet, O.F.M., when integrated by the 1952 Supplement prepared by him, states (in n. 193) simply that the priest who performed the ceremonies should sign a document attesting the canonical erection of the Stations, that the document should be preserved in the archives (sacristy) of the church, and that periodically, usually at five-year intervals, invalidly erected Stations are validated by the Sacred Penitentiary. Jone's *Moral Theology,* in the revised English translation of the 13. German edition (Westminster, Maryland: The Newman Press, 1953) covers the point in question quite succinctly, but likewise without any reference to the prescribed rules connected with the date of May 10, 1742.

> After erecting the Stations the priest who erected them must make a memorandum, in which he indicates that he erected the Stations and by whose power he did so. He must sign the document, which is thereafter kept in the parish archives. If he received delegation from the Ordinary the latter must receive a certificate.—Exhibition of the memorandum and conservation of documents are not necessary for validity.

By their quinquennial faculties the bishops of this country have not acquired any power of delegating others as their agents for the erection of the Stations. Inasmuch as vicars and prefects apostolic do enjoy this faculty, it does not seem unlikely that bishops in this country can upon application acquire the same faculty, especially when the circumstances on both sides are of a similar character. The Way of the Cross is indeed a time-honored devotion conducive to a solid piety, and for its widespread propagation among the faith-

ful the Holy See may be regarded as the first and greatest protagonist. As by law the exclusive episcopal faculty is duly safeguarded through the fact that it is made incommunicable to others, so by special grant this faculty can be and is made a source whence others derive the capacity of aiding the bishop in the spreading of this devotion. If a bishop's preoccupation with other matters bars him from erecting the Way of the Cross in some suitable location in the diocese, then it is heartening to know that some priest, as agent for the bishop, can accomplish the beneficent task for him.

Clement Bastnagel

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## THE FUNCTION OF RELIGION IN PUBLIC SCHOOLS

Dr. Clarence Linton, Professor of Education in Teachers College, Columbia University in an article published in the March-April issue of *Religious Education,* summarizes a report made by the Committee on Religion and Education of the American Council on Education which was entitled *The Function of the Public School in Dealing with Religion.* Dr. Linton served as Director of the study from September, 1951, to January, 1953. In response to a questionnaire submitted to 1,113 leaders in education and to 835 religious leaders, 88 percent of the former and 93 percent of the latter gave as their opinion that the First Amendment to the Constitution of the United States and the tradition of the separation of Church and State "were never intended to mean and do not now mean that the public schools have no function in dealing with religion."

# Decrees and Decisions

## CANONICAL

### POPE'S LETTER TO AMERICAN CHILDREN

Because of his illness our Holy Father omitted his annual Ash Wednesday radio appeal to the children of the United States exhorting them to make sacrifices in behalf of needy children throughout the world. Instead he sent a letter to them, praising the generosity of the three million parochial school children here and urging on them the practice of self-denial in favor of the underprivileged abroad. His Excellency, the Most Reverend Karl J. Alter, D.D., Archbishop of Cincinnati, Chairman of the Administrative Board of the National Catholic Welfare Conference, made the radio appeal in the Pope's place.

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### MASS OF ST. DISMAS IN PENAL INSTITUTIONS

The Sacred Congregation of Rites has permitted once annually the celebration of the Mass of St. Dismas in all correctional institutions in the United States. The second Sunday of October is the day appointed for it, provided it does not concur with a feast of major rite.

## SECULAR

### SENATE APPROVAL OF CONANT

Dr. James B. Conant said before the Senate Foreign Relations Committee that his views on American education are not exportable and that the question of the payment of tax money to private schools is a peculiarly American issue which does not exist in Germany. He was approved by the Senate with less than a quorum present.

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## LUTHERAN COUNCIL OPPOSES VATICAN REPRESENTATIVE

The National Lutheran Council closed its thirty-fifth annual meeting by sending a letter to President Eisenhower opposing the appointment of a representative of the United States to the Vatican. The Council represents eight separate Lutheran bodies with four million members.

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## POLL REGARDING RELIGIOUS INSTRUCTION

According to a poll conducted by the *Catholic Digest*, forty-two percent of the people of the United States think that private denominational schools are good for the nation; sixteen percent think they are bad; thirty-one percent expressed no opinion, and eleven percent gave qualified answers. More than one-half favor free public transportation for children attending private schools. Ten percent more favored the supplying of auxiliary services than opposed it; nine percent more opposed than favored the use of tax money to support religious schools. Fifty-four percent favored released time. About twenty-five million think that their children should be free of formal religion until they are old enough to make up their own minds.

* * * * *

## RELIGION IN PUBLIC SCHOOLS

The American Council on Education sent questionnaires to forty-seven chief State school officers, two hundred and thirteen superintendents of schools in cities of over fifty thousand in population, and to one thousand college presidents, with a view to ascertaining the function of the public schools in dealing with religion. It has published a work with appropriate title. It was found that most public schools in the United States follow one of two ways of integrating religion with the curriculum: 1—through planned religious activities (such as prayer, Bible-reading, etc.); or 2—through factual religious study (such as visits to churches, a study of the influence of religion on our government or on society, etc.).

* * * * *

## RELEASED-TIME

Dr. Erwin Shaver, Executive Director of the National Council of Churches' Department of Weekday Religious Education, says that between twenty-five hundred and three thousand communities in the United States now have the released-time program of religious instruction. In Ohio alone, he says, more than one hundred and fifty communities have it. Writing in *Religious Education,* he insists that since the decision of the Supreme Court of the United States in *Zorach v. Clauson* released-time has regained the ground lost through the decision of the same Court in the McCollum case. He states that two million and a half children are the beneficiaries of the program. He strongly feels that the later decision compels school systems to introduce released-time at the request of the parents. Previously only New York and Hawaii had obliged the school superintendents to release children for religious instruction. Dr. Shaver notes, however, that there still remains the problem of persuading school authorities to give credits for religious instruction. Only the Supreme Court of Washington State has declared credits granted for religious subjects to be illegal.

An adverse view contesting the value of religion in the schools is implicit in the opinion of Dr. Israel Goldstein, President of the American Jewish Congress, who, considering the practice of opening classes with prayers as a possible wedge for the breakdown of the separation of Church and State, bluntly affirms that prayer in the schools has no influence on moral development.

Religious instruction of public school children in a released-time program has been unanimously approved by the Providence, Rhode Island, School Committee, after the rejection of a compromise proposal under which all children would have been dismissed. Under the accepted program pupils are to be released from classes at regular school hours for a maximum of one hour a week at the written request of their parents. An Advisory Committee for the administration of the program has been established consisting of seven clergymen and educators of five different faiths. This Committee recommended deferment until the Fall of the introduction of the program while it studies policy to be followed in connection with it.

The Superintendent of the Springfield, Massachusetts, Methodist

district has questioned the legality of released-time religious instruction in the Chicopee high school class rooms, alleging that the practice is in opposition to the decision of the Supreme Court of the United States in the McCollum case.

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## SINGING OF "AMERICA" IN NEW YORK

The Board of Education of New York City voted unanimously for a provision under which all public schools are to open each day's classes with the singing of the fourth stanza of "America" immediately after the pledge to the flag. This ceremony was offered as a substitute for the recitation of the prayer urged by the State Board of Regents, adopted by only three hundred and twenty-five out of three thousand school districts.

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## DISTRIBUTION OF PROTESTANT BIBLES

The Superior Court of New Jersey has ruled that it is not unconstitutional for the Rutherford School Board to distribute Gideon Bibles to students in public schools, though the Court held the action not to conform to good policy.

The Akron Board of Education at first voted to allow the Gideon Society to distribute Protestant Bibles through the public schools to children whose parents signed a request for them. Subsequently, however, it rescinded this permission.

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## ST. PATRICK'S DAY BENEFIT EXCLUDED FROM PUBLIC SCHOOL

The Brewster, New York, School Board withdrew permission for the use of a public high school auditorium for a St. Patrick's Day benefit performance which was to aid a building fund. It did this when the Ministerial Association protested that such a use of the auditorium was in the interest of fund-raising for a partisan religious project.

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## BUS TRANSPORTATION IN RHODE ISLAND

The Providence School Committee has extended to children of the elementary grades in private schools the same bus transportation privileges as those enjoyed by public school pupils. This action was taken without dissent in answer to a request made by the parents of the children involved.

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## MISSOURI ALLOWANCE FOR BUS TRANSPORTATION

The present Missouri law allowing three dollars for the transportation of children attending private schools has been amended by the House to allow five dollars for that purpose, though at first the House voted down the amendment.

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## PAROCHIAL SCHOOL TAX-EXEMPTION IN CALIFORNIA

On November 4th the referendum determining the tax-free status of parochial schools in California showed a plurality of 77,477 votes in favor of exemption. Twenty-five of fifty-eight counties voted in favor of exemption.

The California dioceses have formed five corporations holding title to the parochial schools in order to expedite the process of tax-exemption through the offices of the county assessors and the State Board of Equalization.

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## CHURCHES MENTIONED IN HOTEL ADVERTISING

The New York State Commission Against Discrimination has ruled by a 3-1 vote that the mention in resort hotel advertising of the location of churches is not a violation of law inasmuch as it is rather to be considered as a public accommodation.

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## INDIANA LAW ON GAMBLING DEVICES

Though signed by the Governor, the Attorney General of Indiana has held unconstitutional an amendment in a law outlawing the possession of chance devices but containing an amendment exempting churches, lodges, and veterans' organizations from the operation of the law.

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## INDIANA ALLOWANCE FOR WARDS OF STATE

After once voting the bill down by a count of 26-13, the Indiana Senate unanimously passed a measure to increase the welfare aid to children in church and charitable institutions from two dollars to three dollars a day. The House had previously passed the bill.

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## GOOD FRIDAY BILL IN NORTH CAROLINA

A bill that would have made Good Friday a legal holiday in North Carolina was defeated by the Committee on Propositions and Grievances of the Senate.

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## TAX-EXEMPTION OF RECTORY FURNITURE

The County Tax Commission in South Sioux City, Nebraska, refused the claim of four clergymen to exemption from the personal property tax on the ground that their property, mostly household goods, is used for religious purposes. Refunds were made, however, on automobile taxes because the latter were regarded as used solely for religious work.

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## TEST OATH IN PUERTO RICO

Required to swear allegiance to the new Constitution of the Commonwealth, Miss Ana Maria Collazo took the oath as to observing and defending the laws, but excepted laws contravening the divine law, meaning those concerning therapeutic abortion and artificial birth control. The Department of Justice ruled that this procedure did not meet constitutional or statutory requirements. As a consequence, she was dismissed by the Secretary of Education.

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## RELIGIOUS INSTRUCTION IN THE PHILIPPINES

*The Sentinel*, a Catholic weekly published in Manila, printed a photostatic copy of a document showing that the Secretary of Education and the Director and the Assistant Director of public schools are members of the Masons' "Special Committee for the Elimination of Religious Instruction in Public Schols". This may explain why since the war, every attempt to introduce religious instruction in the public schools has been effectively blocked by the school

authorities even though the Constitution guarantees the right of voluntary religious instruction to every student for one-half hour three times a week. The teachers are willing to cooperate with the instructors but they are threatened with the loss of their positions by contrary rulings of the Board of Education.

A joint pastoral letter of the Catholic Hierarchy charged that the Secretary of Education and two other key education officials have been since 1949 members of a secret committee organized by the Grand Lodge of Free and Accepted Masons of the Philippine Islands. The Philippine Congress has voted to conduct a probe of the charge.

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## CATHOLIC TEACHERS IN NOVA SCOTIA SCHOOLS

The local branch of the Protestant League of Canada threatened to carry to Canada's highest tribunal the action of the School Board of Sydney, Nova Scotia, in opening a new public school staffed entirely by Catholic teachers, including members of a religious order. Another school recently erected is to be staffed with Protestant teachers.

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## FRENCH STATE SCHOLARSHIPS FOR USE IN CATHOLIC COLLEGES

For the first time since the so-called separation of Church and State at the beginning of the century, French students attending Catholic colleges have been placed on a footing equal with those attending State colleges. New legislation which permits students to use State scholarships at Catholic universities has been approved by the Senate and the National Assembly. Legislation enacted in 1951 had previously granted State aid to Catholic primary schools in the form of scholarships for needy students and had given education allowances for parents through Church, school or parents' groups.

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## WEST GERMAN AFFAIRS

Chancellor Konrad Adenauer states that the West German Government "upholds and will bring to full validity" the 1933 Con-

cordat between the German Reich and the Vatican. The validity of the Concordat has been challenged by the Government of the West German State of Wuerttemberg-Baden in the American Zone. Its Constituent Assembly rejected, by a slight majority of Government parties, a move to recognize the Concordat in the State's new Constitution through the approval of a contrary provision that contemplates the introduction of so-called Christian community schools, i.e., interdenominational schools.

The Federal Parliament of West Germany has been given an eight-page note issued by the entire German Hierarchy which criticizes features of a proposed family law. The note declares that the bill tends to establish the principle that divorce is legally possible and insists that the bill should rather express the principle of the indissolubility of legally contracted marriage. The note also urges that obligatory civil marriage be abolished.

The West German Bishops have set up a " Catholic Berlin Emergency Relief " to aid Eastern German refugees who reach the West Berlin Zone. An average of five hundred a day cross into this zone. The organization will also establish a system under which West German families will adopt families in the Eastern Zone and will support them with food parcels.

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## ANTI-JESUIT LAWS IN SWITZERLAND

Action to expel Jesuits from the Zurich Canton has been taken by the Canton Council at the demand of the Zurich Municipal Council which reported that twenty Jesuits were living in the Canton. The Jesuits would be permitted to give spiritual direction to students but not to deliver public addresses at youth assemblies or conferences on theological subjects. Any exercise of the spiritual ministry, such as the hearing of confessions, is also forbidden to them.

These anti-Jesuit regulations date back to the Swiss Federal Constitution of 1871. The following articles of the Constitution give a fair indication of their character. Article 50 forbids the establishment of a bishopric without the consent of the Swiss Confederation. Article 51 prohibits the reestablishment of any house of the banished Jesuits, as well as any activity on their part in churches and schools. Article 52 interdicts the foundation of any religious congregation. Other cantonal laws forbid public liturgical processions and the public wearing of religious garb.

# Book Reviews

DE MATRIMONIO: IUS MISSIONARIORUM. Auctore G. Vromant, C.I.C., M. de Scheut. Editio tertia emendata et aucta. L'Edition Universelle, S.A., Bruxelles, Desclée de Brouwer, Paris, 1952. Pp. xvi-440.

There are a number of acceptable treatises on Marriage but few of them are written from the standpoint of law with special reference to missionary countries. Among these few treatises, the work of Vromant is perhaps the most useful.

The third edition of this book corrects some minor errors and contains about forty pages more than earlier editions.

There are three principal divisions: the celebration of Marriage, the dissolution of the Marriage of pagans and the adjudication of Marriages.

Obviously in a work written with special consideration for missionary countries, the second part of this treatise is of prime importance. Here one meets with a clear and detailed discussion of the Pauline privilege and of the dissolution of Marriage through the use of the plenitude of pontifical power. The latter act is carefully distinguished from the former.

There is no bibliography but ample citation of commentators and of decisions of the Holy See is found in the footnotes. There is a chart of canons cited. The index is complete.

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STATE OF PERFECTION AND THE SECULAR PRIEST. A Theological Study by Rev. C. H. Dukehart, S.S., M.A., S.T.D. A Grail Publication, St. Meinrad, Indiana. Pp. x-186. Price $3.00.

This dissertation is long overdue. The determination of the state of spiritual perfection of the secular clergy had been actually considered by the theologian Gerson, by Pope Benedict XIV and, in more recent times, by Mahony and Parente. In these instances, however, the question was not always treated as a primary object

but rather as an important inference. Nevertheless, the state of perfection of the secular clergy was felt to be somehow something many took for granted but few were willing entirely to face the subject squarely and completely to see what could and should be said in clear, unequivocal and unmistaken terms. Now a treatise exists in the vernacular which is a welcome contribution both to ascetical Theology and to the exposition of Canon Law.

Despite the opinion of St. Thomas and and of others who followed his opinion, it has always seemed to the reviewer incredible that the very state of the secular priest, even without vows, should be considered as a somewhat inferior state of perfection. Some even denied him any such state whatever. The actual existence of the secular priest's exalted ministry, his mission to be the instrument of the perfection of others and the demands of his daily duties all combine to require him to be in a state of perfection commensurate in every way with his dignity and vocation.

In this matter, it is a distinct comfort and and a pleasant satisfaction to see the author use the proper term to designate the clergy about whom he writes so well. The author has properly avoided the historically incorrect and the canonically inexact term "diocesan priest". There is really no justification in the sources of Canon Law and, indeed, practically none at all in *The Code of Canon Law* for the use of the latter term although it is widely employed today.

As short as the author's work is, he successfully establishes a delineation between the interior state of perfection of the secular priest and his exterior state of perfection. It is necessary to keep this in mind since the author himself even when he deliberately studies one part of his subject lapses at times into a mild mixture of these two ideas. This is true when he describes some of the obligations of the priest which are principally imposed by the law to aid and further interior spiritual perfection. A canonist, however, and most theologians will appreciate the author's difficulties and resolutely set down one idea beside the other without confusion.

The controversy regarding the state of perfection of the secular clergy is ably proposed on the negative side by St. Thomas and on the positive side by Suarez. The author in consummate detail of text and exposition states and comments on both sides of the controversy. He exhibits extraordinary modesty in differing with the

opinion of St. Thomas. There is nothing of official doctrine in this matter but the reverence of the author for the Angelic Doctor is almost everywhere apparent. It is true that he ultimately approves of the position of Suarez but he does not, of course, use the same freedom of the great Jesuit theologian and canonist.

As indicated above, the author favors the view that the secular priest possesses a state of perfection. He calls this the state of exercising perfection: *Status perfectionis excercendae seu servitii.* The last term here places this state under the general state of the Bishop's perfection who primarily possesses the state of acquired perfection. In arriving at this conclusion, the author in an excellent way considers and adopts the challenge of Suarez concerning the arguments of St. Thomas.

Proofs for the claim that the secular priest possesses a state of perfection are drawn from the evidence of *The Code of Canon Law* and from the nature of the priesthood. The latter argument is by far the more convincing. A few of the arguments from Canon Law are beyond the competence of the author who is not a canonist. Some technical terms, such as *inconsulto Ordinario,* are improperly translated. The term mentioned does not mean the necessity of permission. On the whole, however, the author has acquitted himself of a sincere and acceptable work. He should be justly proud of his book. His professor and his University should be equally proud of him.

Toward the end of this book, there is an extended chapter dealing with evidence for the state of perfection of the secular clergy drawn from pre-Code legislation and from the Fathers of the Church. This is superabundant material which is interesting reading but which adds comparatively little to the decisive stand taken by the author.

The bibliography on a subject of this kind will inevitably consist in a large measure of articles. The pertinent articles are mentioned. Of course, the fundamental texts of St. Thomas, Gerson and Suarez are adequately cited both in the bibliography and in the footnotes. The index is entirely satisfactory.

A final word is of congratulations. The author has contributed something really worth while in ecclesiastical studies. The hope is that this book will be widely read and thoughtfully considered.

MENTAL AFFLICTION AND CHURCH LAW. By Rev. R. Colin Pickett. Universitas Catholica Ottaviensis. Dissertationes ad gradum Laureae. Series canonica, Tomus 25. The University of Ottawa Press, Ottawa, Canada, 1952. Pp. x-220.

The reviewer has had several opportunities to comment favorably on the dissertations published by the University of Ottawa. This occasion is no exception. The dissertation under review is another example of the excellent work performed at the University of Ottawa.

The author's dissertation on the consideration of mental affliction and the law of the Church is an extremely useful work which should be read and digested by officials of the curia, by officers of tribunals and by pastors and confessors. There are many fields into which this subject enters and as perfect a concordance as possible should be found so that validities of Sacraments and contracts and certainties of obligations may be properly assessed.

Very little adverse criticism regarding this book can be adduced to indicate error or compromise. Attention, however, must be called to the fact that a book of two hundred and twenty pages can scarcely deal fully with the proposition indicated in its title. Especially, is this so when one hundred pages are devoted to an historical conspectus. This is not in any sense a criticism of the contents but rather a plea that the separate parts of the canonical commentary be expanded to a full-length treatise of this important subject. Perhaps some future student will attempt this goal.

The author holds that the insane are not bound by ecclesiastical laws. This is a position he adopts in the face of a controversy regarding lucid intervals of the habitually insane. The precise point of this opinion is not indicated in the law of the Church and the author's position is maintained by presumption. The reviewer agrees that this presumption is valid.

Difference of opinion, too, arises in regard to domicile. The author holds (1) that an insane wife retains the domicile of her husband even if she is under the care of a guardian and (2) that the wife of an insane husband obtains her own domicile if legitimately separated from her husand. This latter position is maintained against the opinion that the wife retains the domicile of her husband before his insanity.

Toward the end of his historical conspectus, Dr. Pickett exhibits an extract from a sixteenth century work: Mascardus *Conclusiones Probationum Omnium*. This extract consists of twenty points which could be considered as aids in determining insanity. Some are unquestionably valid today while others would be thought of as an indication of bad manners. Psychiatry has done much to help understand the insane.

Available space does not permit a chapter for chapter review of all the Sacraments in regard to the insane. The chapters, however, are well done although, as mentioned above, more detailed work must be expected.

The bibliography is sufficient but in some cases the latest editions of works are not cited. A number of dissertations published at The Catholic University of America are mentioned. The index is far from satisfactory. It needs considerable expansion to be really useful.

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LE JEÛNE EUCHARISTIQUE. Rev. Dr. Jan Piekoszewski. J. Peyronnet & Cie., Editeurs, Paris, 1952. Pp. 124.

This book is divided into two unequal parts.

The first part is a series of lengthy chapters, four in number, which consider the historical development of the Eucharistic fast. Chronology is the central point of division. The initial period considers Eucharistic fast from the origin of Christianity to the fifth century. Here are studied the ancient rituals of the Eucharist and the earliest witnesses for the fast pertaining thereto. The next period is a study from the fifth century to the Council of Constance. Exceptions to the Eucharistic fast occur in this chapter. The third chapter considers the centuries from the Council of Constance to *The Code of Canon Law*. Some details regarding the Eucharistic fast are proposed. The last chapter of this historical part is a statement of the modern law of Eucharistic fast together with the modifications of this law since it promulgation.

Of paramount interest is the second part of this book. This consists of the author's consideration of some questions of recent importance. It is useful to see a discussion on the subject of Eucharistic fast in relation to problems arising during the war and in relation to sociology and medicine.

Dr. Piekoszewski's work concludes with a discussion of recent opinions relative to possible mitigation of the Eucharistic fast.

There are, unfortunately, too many typographical errors. Besides, there are some odd combinations of language, such as, Sacra Congregatio dei Riti, Sacra Congregatio de Sacramenti. There is no index. The bibliography is satisfactory, but articles are combined with works of reference. The periodicals cited are mostly of European publication. Only one magazine for clerics mentioned here is published in the United States. This is the *Ecclesiastical Review*. Articles and consultations found in other American magazines are not mentioned in the bibliography. The source-book of Bouscaren, however, is mentioned. The same is true of Anglin's dissertation on the Eucharistic fast.

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THE FIFTH SYNOD OF THE DIOCESE OF COLUMBUS. St. Joseph's Cathedral, October 8, 1952. The Most Reverend Michael J. Ready, D.D., Bishop of Columbus. Pp. 40.

The growing list of diocesan synods is now increased by the synod of the Diocese of Columbus. There is much to be thankful for in these synods as they bring to date the particular law of many localities and determine in some detail the discipline of the general law of the Church. There are always problems of administration which must ultimately be resolved at the diocesan level. In these matters, only the most general provisions can be made in *The Code of Canon Law*.

From a note prefixed to the first appendix of the fifth synod of Columbus, it is learned that the statutes under review are a temporary publication. The complete synod with all its acts will apparently be published later. However, all the statutes are at hand.

These statutes are constructed in the proper way. Reference is, at times, made to *The Code of Canon Law* but repetition of its text is avoided.

Some statutes in this synod should be mentioned as good examples of diocesan legislation. One of these is the obligation to make a will and indicate where it is deposited. This provision has found itself in several synods in recent years. More proper to this synod is the obligation to carry sufficient insurance and the provision that

parish funds be expended for the protection of parish automobiles. Salaries, too, are matter of legislation. Of particular interest, is the provision that these salaries are not to be interrupted by casual illness or legitimate vacation.

Multiple recording of the sacrament of Baptism, conferred in a hospital, is provided for in one statute. This item is to be recommended because it makes for convenience when a certificate is required.

Another statute certainly worthy of mention is the law requiring the assistance of visiting confessors. Special times of the year are recommended. Retention of money of unrequited obligations of Mass intentions is adequately covered by a statute demanding a separate and special fund with the statement that this money is not personal property. One item of liturgy should be mentioned here. This is the provision for the use of the pall over coffins in funeral ceremonies. Every church should have such a pall and it is to be hoped that this ritual provision will be obeyed in the Diocese of Columbus.

Several statutes should be clarified. Priests working in the diocese but not incardinated are said to be bound by the statutes of Columbus. But, aside from public order and certain formalities, at least a quasi-domicile is necessary for such obligation. Again, a recommendation is made that a fast of four hours precede Holy Communion at midnight Mass. Care should be used that, aside from papal precept, this recommendation should not be interpreted as an obligation.

Founded Masses are the subject of a statute. The diocesan law here is correct in regard to the transfer of a manual stipend *ad instar* but it makes no provision for the beneficiary to retain the possible excess over the diocesan stipend. Since pastors possess a benefice, this item could be of some importance and should be clarified.

One item of the liturgy is scarcely in accordance with the rubrics. Votive Vespers are suggested when proper Vespers cannot be sung. However, there is no provision in the Breviary for a text of votive Vespers. Votive offices of all kinds were eliminated in the reform of Pope Pius X.

All in all the statutes of the Diocese of Columbus can be studied with profit. This study is suggested to all students of diocesan law.

BAR EXAMINATIONS AND REQUIREMENTS FOR ADMISSION TO THE BAR. James E. Brenner, consultant. Shepard's Citations, Colorado Springs, Colorado, 1952. Pp. xvii-498. Price, $5.

This is primarily a survey organized and conducted to examine the legal profession in so far as its initial features are concerned. But in reality, much more is found in this book than a mere statistical survey. There are many evaluations of existing standards (or the lack of them) in the separate States and many recommendations which deserve the utmost consideration. It is almost incredible to see the diverse requirements set up in the various laws which control bar examinations and requirements for admission to the bar. Not only is there a wide divergency in the number of years required for pre-legal training but the actual treatises upon which the candidate is examined differ considerably. It is true that in most States fundamental treatises are matter for bar examinations but beyond these there is not much uniformity. Some of this divergency can be attributed to local and State-wide conditions but the conviction remains that a better basis for examinations could be found.

The chapters of this book are mostly written in the form of essays. The opening chapter, however, is a series of reports offered by the consultant. The remaining chapters are contributed by persons recognized as competent in their field by the legal profession. Some topics of these chapters may be mentioned. For instance, there is a chapter on the requirements for admission to Federal Courts by Mr. Homer D. Crotty. Another, on admission of attorneys from other jurisdictions by Mr. Goscoe O. Farley. A long chapter on bar examinations is contributed by several lawyers. In this chapter is found a dissertation on the scope and content of these examinations by Mr. George Neff Stevens and a series of suggestions to improve these examinations by Mr. James E. Brenner.

Of particular interest, is a condensation of the laws governing the educational requirements for admission to the bar. These range from no definite requirement at all to several years of study in college.

Outside of the legal profession, this book probably will have little circulation but it ought to be found in all legal libraries. It is of value, too, to all lawyers who want to know the status of those who will later join their profession.

EDWARD ROELKER

THE CATHOLIC UNIVERSITY OF AMERICA

# Chronicle

## GENERAL

The fourteenth anniversary of the coronation of our Holy Father was observed in the National Shrine of the Immaculate Conception on March 12th. The Solemn Mass was celebrated by Very Rev. Msgr. Luigi Dadaglio, Auditor of the Apostolic Delegation. The sermon was preached by Most Rev. Joseph McShea, D.D., Auxiliary Bishop of Philadelphia. There were present and presiding the Most Reverend Apostolic Delegate; Most Rev. Patrick A. O'Boyle, D.D., Archbishop of Washington. Present also were Most Rev. Francis P. Keough, D.D., Archbishop of Baltimore; Most Rev. John M. McNamara, D.D., Auxiliary Bishop of Washington; Most Rev. Patrick J. McCormick, D.D., Rector of The Catholic University of America; Most Rev. Lawrence J. Shehan, D.D., Auxiliary Bishop of Baltimore; and Most Rev. Arsene Turquetil, D.D. Representatives of the diplomatic corps from twenty nations were also in attendance as well as Cabinet officers, judges, and members of Congress.

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His Eminence, Norman Cardinal Gilroy, Archbishop of Sydney, was the Papal Legate at the First Philippine Plenary Council.

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Most Rev. Antonio Samore, D.D., formerly Papal Nuncio to Colombia, has been named Secretary of the Sacred Congregation for Extraordinary Ecclesiastical Affairs.

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Most Rev. Gustavo Testa, D.D., Apostolic Delegate to Palestine since 1948, has been named Papal Nuncio to Switzerland.

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Most Rev. Paolo Pappalardo, D.D., formerly Apostolic Delegate to Iran, has been named the first Apostolic Internuncio to Syria. Syria joins Egypt and Lebanon as the third Arab State to establish diplomatic ties with the Vatican. The new Syrian Minister to the Vatican is Dr. Anwar Hatim, a Catholic and Secretary General of the Council of Ministers.

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"International Economic Relations and Catholic Principles" was the subject of the address delivered on December 29, 1952, by His Eminence, Samuel Cardinal Stritch, before the delegates of the National Convention of the Catholic Economic Association assembled in Chicago.

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His Excellency, the Most Reverend Apostolic Delegate celebrated a Solemn Pontifical Mass in St. James' Pro-Cathedral, Brooklyn, as the major observance of the events marking the centenary of the Diocese.

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To open the celebration of the seventy-fifth anniversary of Creighton University, Most Rev. Gerald T. Bergan, D.D., Archbishop of Omaha, will officiate on April 12th at a Solemn Pontifical Mass in St. John's Church. His Eminence, Samuel Cardinal Stritch, will be the principal speaker at the banquet on April 16.

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Most Rev. Francis P. Leipzig celebrated a Solemn Pontifical Mass in the Cathedral of St. Francis, Baker, Oregon, to observe the golden jubilee of the Diocese.

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April 7-10, the fiftieth annual Convention of the National Catholic Educational Association was held in Atlantic City.

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April 7, the twenty-seventh meeting of the American Catholic Philosophical Association opened at the University of Notre Dame.

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March 16-18, the twenty-first annual National Catholic Conference on Family Life was marked by a Solemn Pontifical Mass celebrated by the Most Reverend Apostolic Delegate in the Cathedral of SS. Peter and Paul, Philadelphia. The sermon was preached by Most Rev. Patrick A. O'Boyle, D.D., Archbishop of Washington.

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The fifteenth annual Conference on Eastern Rites and Liturgies was held at Fordham University.

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May 16-19, a general assembly of the International Catholic Association for Radio Broadcasting and Television was held in Cologne.

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January 7, a Solemn Pontifical Requiem Mass was celebrated in St. John's Cathedral, Fresno, for Most Rev. Philip G. Scher, D.D., who died January 3. The celebrant of the Mass was Most Rev. Aloysius J. Willinger, C.SS.R., D.D., who automatically becomes Bishop of the See. The sermon was delivered by Most Rev. Timothy Manning, D.D., Auxiliary Bishop of Los Angeles.

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## DIGNITIES

February 11, Most Rev. Celestine Damiano, D.D., Titular Archbishop of Nicopolis in Epirus and Apostolic Delegate to South Africa, was consecrated in St. Joseph's Cathedral, Buffalo, by Most Rev. Joseph A. Burke, D.D., Bishop of Buffalo. The co-consecrators were Most Rev. John F. O'Hara, C.S.C., D.D., Archbishop of Philadelphia, and Most Rev. Leo R. Smith, D.D., Auxiliary Bishop of Buffalo. The sermon was preached by Most Rev. Fulton J. Sheen, D.D., Auxiliary Bishop of New York.

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March 19, Most Rev. John F. Hackett, D.D., was consecrated Auxiliary Bishop of Hartford in St. Joseph's Cathedral, Hartford, by the Most Rev. Henry J. O'Brien, D.D., Bishop of Hartford. The co-consecrators were Most Rev. Francis P. Keough, D.D., Archbishop of Baltimore, and Most Rev. Matthew F. Brady, D.D., Bishop of Rochester. The sermon was preached by Most Rev. Richard J. Cushing, D.D., Archbishop of Boston.

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Most Rev. Martin J. O'Connor, D.D., Rector of the North American College, was named Assistant to the Pontifical Throne to mark the tenth anniversary (January 27) of his consecration as Titular Bishop of Thespia.

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Rt. Rev. Philip Berning, O.S.B., D.D., has been elected fifth Abbot of St. Gregory's Abbey, Shawnee, Oklahoma.

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March 19, Rt. Rev. Eugene Medved, O.S.B., D.D., the first Abbot of Westminster Abbey, Vancouver, British Columbia, was blessed in Holy Rosary Cathedral, Vancouver, by Most Rev. William Mark Duke, D.D., Archbishop of Vancouver.

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Rt. Rev. Vincent J. Daly, O.C.S.O., has been blessed as sixth Abbot of Our Lady of New Melleray Abbey, Iowa.

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Very Rev. William Maloney, S.J., has been named Provincial of the Maryland Province.

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Very Rev. Robert F. Elliott, C.SS.R., has been named Provincial of the new Redemptorist Province of Oakland, California.

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Very Rev. Raymond J. Hunt, O.M.I., has been named Provincial of the American Province of the Oblates of Mary Immaculate.

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The following have been named Protonotaries Apostolic: Rt. Rev. Msgrs. Vitus S. Graffeo and William F. O'Brien, of the Diocese of Dallas; and Bernard Weber, of the Diocese of Sioux Falls, South Dakota.

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The following have been named Domestic Prelates: Rt. Rev. Msgrs. Herbert J. Egbring, George J. O'Bryan, and Charles A. Towell, of the Diocese of Covington.

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The following have been named Papal Chamberlains: Very Rev. Msgrs. John J. Cain, of the Archdiocese of Newark; Gerald V. McDevitt, of the Archdiocese of Philadelphia; Joseph J. Sullivan, of the Diocese of Rochester; Nicholas Babak, Joseph Batza, Dymtro Gresko, Joseph Schmondiuk, and John Stock, of the Philadelphia Exarchy of the Ukrainian Byzantine Rite.

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Rt. Rev. Msgr. Patrick A. Ryan, Deputy Chief of Army Chaplains, has been appointed Brigadier General.

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The Papal Medal *Pro Ecclesia et Pontifice* has been awarded to Judge Harold A. Stevens and Gerard L. Carroll, of the Archdiocese of New York; Rose A. Manganaro; Marguerite McLaughlin, of Lexington, Kentucky; and Mrs. Elizabeth Welsh, wife of the Commanding General of the American Military Aid Mission to Turkey.

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The Laetare Medal for 1953 was awarded to Mr. I. A. Shaughnessy, of the Archdiocese of St. Paul.

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Mrs. Alphonse J. Gehring, National Organizer of the Order of Martha, has received the Martha Medal of the Catholic Church Extension Society.

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The Family Life Bureau of the National Catholic Welfare Council has presented Family Catholic Action Awards to Rev. Richard T. Doherty, Rev. Peter Richards, C.P., Mrs. F. Stienberghe-Engeringh, and Mrs. Maria Augusta Trapp.

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The Trainer Award for outstanding work in rural health was conferred on Sister Mary Theophane, of the Medical Mission Sisters, Director of the Catholic Maternity Institute in Santa Fe.

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Mundelein College conferred the Magnificat Medal on Mrs. Robert Emmet Garrity, who served with the War Department's Military Intelligence and with the State Department in Madrid during World War II, and who was in charge of refugee welfare work in France for the War Relief Services of the National Catholic Welfare Conference.

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Martin P. Durkin, Secretary of Labor, received the *Rerum Novarum* Award from St. Peter's College, Jersey City, in recognition of his fidelity to the Papal Social Encyclicals.